Cold Cases

Stepping into the fray when the original medical examiner is unavailable

Margaret Greenwald, MD
Retired Chief Medical Examiner, Maine

Lara M. Nomani
Assistant Attorney General, State of Maine

45th Annual New England Seminar in Forensic Sciences

July 29, 2018
Disclosure

- I have no financial interest or other relationship with any manufacturer(s) of any commercial product(s) and/or provider(s) of commercial services.
- I received no commercial support in the preparation of this educational presentation.
Objectives

- To encourage pathologists to participate in the multi-disciplinary review of unsolved homicides
- To describe Maine’s process for reviewing cold cases and preparing them for trial
- To review Supreme Court opinions which may affect ME testimony at trial
- To suggest an approach to report writing that:
  ◦ Addresses potential legal objections &
  ◦ Ensures that you have included all of the important findings from the original autopsy
The man accused of killing 16-year-old Joyce McLain nearly four decades ago was found guilty of murder Thursday by a Superior Court judge, culminating one of the longest homicide investigations in Maine’s history.
Maine is an historically safe state with a high solvability rate for homicides.

Consequently, many of our unsolved homicides are decades old.

Our greatest success has been in prosecuting defendants for murders committed in the 1970s, 1980s and 1990s.

In almost all of these cases, the medical examiner who performed the autopsy was unavailable to testify at trial.
Older cases offer opportunities & challenges
Opportunities

- There is no statute of limitation for murder in Maine
- As time passes, loyalties change
- Science advances
- Perspectives widen
Challenges

- Witness memories fade with time.

- Witnesses die. (Law enforcement officers, eyewitnesses, chain of custody witnesses, alibi witnesses)

- Evidence is lost or destroyed.

- Reconstructing the initial investigation is time intensive.

- And further delayed by the absence of dedicated resources
Why should you participate in the review of cold cases?

- We need your expertise. You offer prosecutors, detectives and scientists a valuable perspective with regards to scene and injury interpretation, cause of death, time of death, weaponry, etc.
- We need your historical knowledge. How were autopsies conducted at the time of offense? Where might additional photographs, notes, X-Rays be located? How have best practices changed over time?
- The families need you. Families need to know that their loved one’s case has not been forgotten. Knowing that a multi-disciplinary set of “fresh eyes” has reviewed the case is reassuring even if it does not generate a prosecution.
- It’s fun.
- PUBLIC SAFETY
The Process in Maine
The Investigative Stage

- We search for and collect everything we can find that is related to the case. (LEO reports, ME files, photographs, recordings, notes, AG files, FBI files, evidence)

- We review for what we find for accuracy & completeness, identify what’s missing, and invariably search some more.

- We conduct multiple roundtable discussions with key players and invite all questions.
What are the primary issues in dispute at trial?
- Time of death
- Cause of death
- Weapon
- Dating and sequencing injuries
- The accuracy of a defendant’s statements

What insights can you offer?

What problems can you identify? (i.e. reversed photographs, mistakes in the original autopsy report, etc.)
Can I testify if I wasn’t present at the autopsy?

Will the original autopsy report be admitted as evidence?

The analysis: The Confrontation Clause

- Crawford v. Washington
- Melendez Diaz v. Massachusetts

Answer: Admissibility varies by jurisdiction
The Role of the Trial ME

- In Maine, we do not admit the original autopsy reports into evidence during our case in chief.

- Instead, we introduce evidence relating to the crime scene and photographs depicting the victim’s injuries.

- We then present a pathologist as an expert witness to offer an expert opinion.

- The admissibility of your opinion requires that you prepare an expert report that identifies your opinion and the bases for it.
Report Writing Preparation

- Gather and review all material available to you.
- You may have the benefit of information which was not known to the original ME.
- Meet with the prosecutor to ensure that your report addresses all potential issues in dispute.
The Report Format

- List all of the material you reviewed in order to prepare your report

- Describe the important scene and autopsy findings

- Clearly delineate whether the findings you describe were visible to you in photographs and/or video OR were noted only in the autopsy report and the diagrams

- Conclude with your opinion as to cause of death, time of death, the significance of various injuries such as defensive injuries, and the mechanism or sequence of various injuries if you can make a determination
Trial Testimony

- Meet with your prosecutor in advance of trial to discuss issues in dispute.

- In Maine, your direct examination will be limited to the materials you reviewed and the opinion you formed based upon that review. You will not be allowed to “parrot” the opinion of or observations made by the prior examiner.

- Cross-examination will be wide open. Defense may ask you to discuss content information in the prior examiner’s report.
Trial Testimony

- Know the issues in dispute at trial and how they will relate to direct and cross-examination

- Be able to articulate an independent basis for your expert opinion(s)

- Be prepared to answer questions about procedure and practice
The Murder of Judy Flagg

- Judy Flagg was stabbed to death in her home in 1983.

- Thomas Mitchell was indicted for her murder in 2006.

- The medical examiner who conducted the autopsy resided outside the country and refused to return.

- Maine’s first post–Crawford case.
Judy Flagg/State of Maine vs Thomas Mitchell

- Mitchell convicted in 26-year-old murder (June 24, 2009)
- Life sentence imposed in Maine cold case (August 3, 2009)
- August 5, 2010 Maine Supreme Court affirmed conviction and denied request for new trial
- Ruling was appealed to US Supreme Court and on June 29, 2012, they denied cert (Refused to hear arguments)
Rita St. Peter was a young woman last seen staggering across a bridge in a mill town late at night on July 4, 1980.

Her body was found the next day on a dirt road. Her pants were down, and there were tire tracks leading up to her body.

Jay Mercier was charged with her murder in 2011, after tire track and DNA evidence linked him to the crime scene.
State of Maine v. Jay Mercier

- Jury finds Industry man guilty of murder in death of Rita St. Peter (Sept 27, 2012)
- Mercier sentenced to 70 years for 1980 killing of Anson woman (Dec 7, 2012)
- Feb 25, 2014 Maine Supreme Court declined to disturb the conviction on Confrontation Clause grounds
The Murder of Joyce McLain

- 16 year old Joyce was last seen alive jogging in her hometown of East Millinocket in August 8, 1980.

- When she failed to return home, locals began searching for her.

- Her body was later found in a grassy area, along telephone lines, behind the local high school.
The man accused of killing 16-year-old Joyce McLain nearly four decades ago was found guilty of murder Thursday by a Superior Court judge, culminating one of the longest homicide investigations in Maine’s history.
How can you help if the COD cannot be confirmed from the autopsy report and photos?
Cold Cases

- Your assistance with investigations is important
- Prosecutors will
  - Provide you all of the materials you need
  - Inform you about issues in dispute so that you can focus your report on those findings
- You provide invaluable expertise that allows these cases to proceed to trial even decades later
  - Even though the COD may not be an issue, there may be many details of the case that will be best explained by the ME at trial
  - Without an ME to cross examine, some cases would not proceed to trial despite new witnesses or DNA
1. Which of the following statements is true?

   A. The cause of death in a cold case is obvious so Prosecutors don’t need a Forensic Pathologist to testify
   B. If the original pathologist is not available a cold case can never go to trial
   C. A trial ME (pathologist) can testify directly from the original autopsy report
   D. A Trial ME (pathologist) is critical to the successful prosecution of a cold case
2. Which of the following materials should be reviewed before the Trial ME writes their expert report?

- A. Original autopsy report
- B. Photographs
- C. Scene narrative and photographs
- D. Available evidence
- E. All of the above.
2. If DNA was critical in identifying the suspect, the Trial ME may be asked about the following

- A. The testing process for DNA and the expertise of the DNA analyst
- B. The most common procedure for collecting fingernail clippings at the time of the original autopsy
- C. Why the case was not prosecuted at an earlier time
- D. The chain of evidence at the original autopsy