

Testimony Training for Medical Examiner and Coroner (MEC) Offices

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Disclaimer

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Agenda: Testimony Training for MEC Offices

- Prosecution Perspective, Shannon Hodder
- Defense Perspective, Allison Lewis
- Closing



Prosecution Perspective – Testifying with Clarity and Credibility: A Practical Guide for MEC Professionals

Shannon Hodder
Senior Assistant District Attorney
Office of the DeKalb County District Attorney
Decatur, GA

Shannon Hodder

Shannon leads the Cold Case Task Force and prosecutes complex homicide cases, including those that have remained unresolved for decades.

A founding member of the DeKalb County Cold Case Task Force, Shannon collaborates with the Federal Bureau of Investigation (FBI), the Georgia Bureau of Investigation (GBI), the Medical Examiner's Office and private laboratory partners to bring resolution to long-unsolved cases.

She has been instrumental in securing more than one million dollars in federal grant funding to advance cold case investigations and to identify unidentified human remains through Investigative Genetic Genealogy (IGG). She is FBI-trained in IGG, bringing cutting-edge forensic techniques into the courtroom.



Your Role in Court

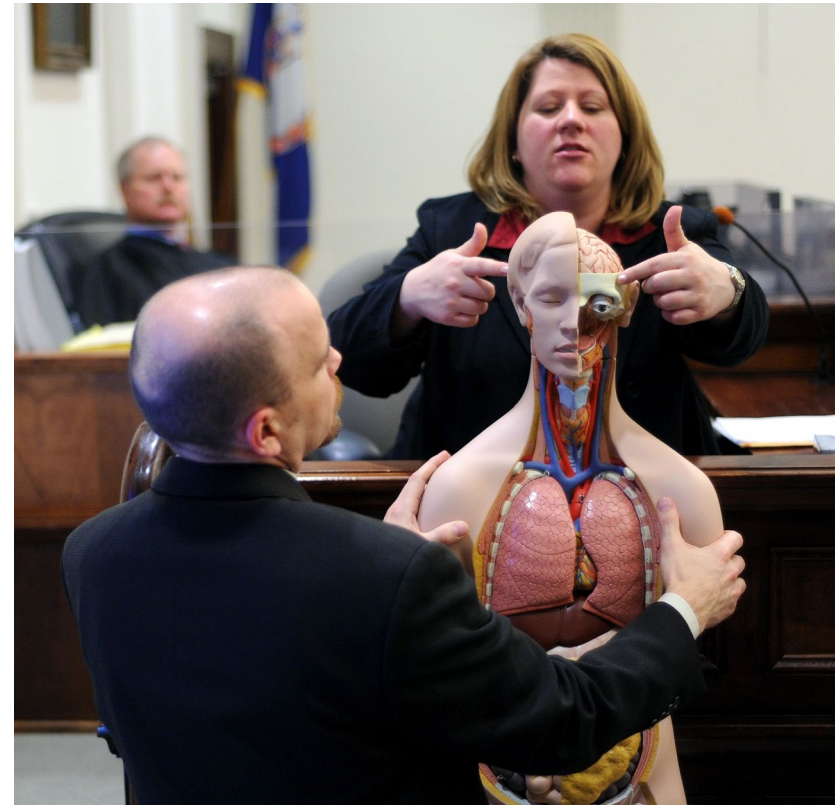
What You Are (and Are Not) There to Do

You ARE:

- A fact witness and/or expert
- A teacher to the jury
- A neutral professional

You are NOT:

- An advocate
- Part of the prosecution team
- Responsible for the outcome



<https://www.vpm.org/2012-08-09/justice-department-looks-for-ways-to-recruit-forensic-pathologists>

What Court Will Look Like

- Sworn in
- Background/qualifications
- What you did in the case
- Your findings and opinions
- Cross-examination

The experience:

- It will feel slower than expected
- Questions will be structured
- You will have time to think

What Prosecution Preparation Should Look Like

- We review your work (report, notes, findings)
- We discuss areas of testimony
- We practice explaining concepts clearly
- We identify limits of your opinions

What we will NOT do:

- Script your answers
- Tell you what to say
- Ask you to change your opinion



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Communicating with a Jury

Practical guidance:

- Assume no medical background
- Avoid jargon or define it immediately
- Use simple comparisons when helpful

Example:

- Instead of: “subdural hematoma”
- Say: “bleeding between the brain and its outer covering”

How to Answer Questions

A Simple Formula



Answer only what was asked. *Then stop.*

Image provided by presenter

Common Pitfall #1: Talking Too Much

Don't Volunteer

- You may go beyond your expertise
- You may introduce issues unnecessarily
- You may create cross-examination problems



Image provided by presenter

Common Pitfall #2: Overstating Conclusions

- **Examples:**
- ✗ “This proves...”
- ✓ “This is consistent with...”
- ✓ “Based on my findings...”

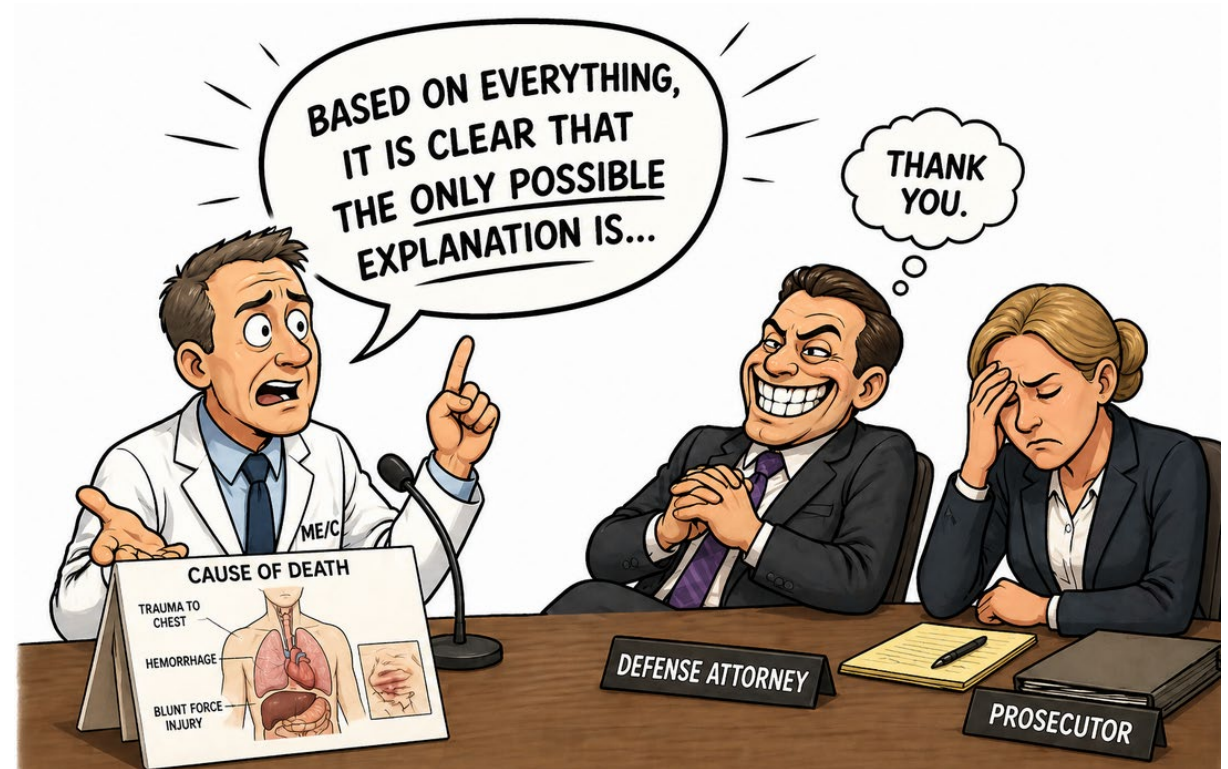


Image provided by presenter

Common Pitfall #3: Getting Defensive

- Be prepared for discomfort:
- Defense attorneys may challenge you
- That is their job—not a personal attack

How to respond:

- Stay calm
- Answer professionally
- Do not argue



Handling When You Don't Know

Examples:

- “I don't know”
- “That's outside my area of expertise”
- “I would need more information”
- “I would defer to on that”



Microsoft 365 Stock Photo

Know Your Lane

- Investigators → testify to what you observed/did
- Pathologists/Fellows → testify to findings/opinions
- Techs → testify to processes and handling

Important:

Do not guess. Do not speculate.



Image provided by presenter

The Takeaway

Keep it simple:

- Tell the truth
- Stay within your role
- Explain it so anyone can understand

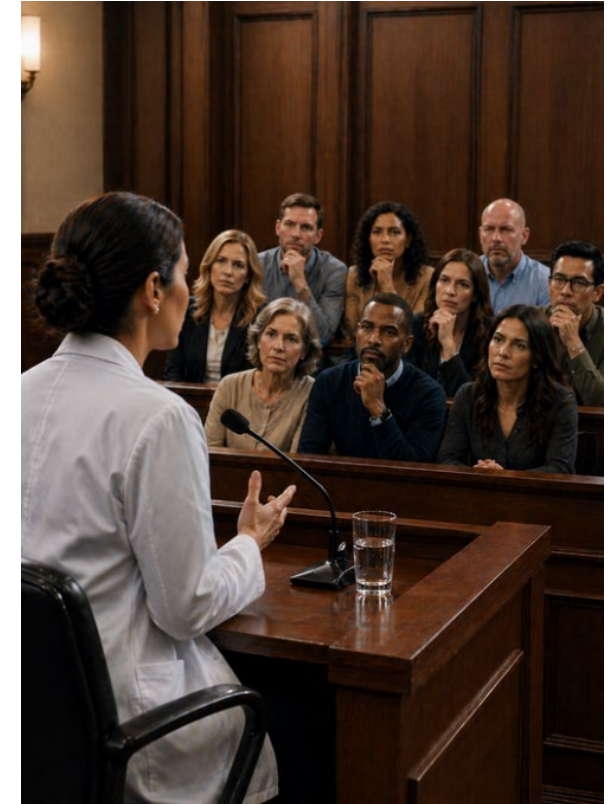


Image provided by presenter

**The goal is not simply to sound like an expert.
The goal is to be understood and trusted.**

Contact Information

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Defense Perspective on Medicolegal Death Investigation (MDI) Related Testimony

Allison Lewis
Staff Attorney
DNA Unit, The Legal Aid Society
New York, NY

Manner of Death (MOD) Testimony

...and how it contradicts the
legal standard



American Academy of Forensic Science Standards Board Consensus Body for Medicolegal Death Investigation (MDI ASB CB)

Medicolegal Death Investigation Consensus Body

The Medicolegal Death Investigation Consensus Body focuses on standards and guidelines related to sudden, unnatural, unexplained or suspicious deaths, including homicides, suicides, unintentional fatal injuries, drug-related deaths and other deaths that are sudden or unexpected; determination of the cause and manner of death.

CURRENT MEMBERS

Troy Armstrong

Stacy Drake

Keith Findley

John Fudenberg

Jeff Gilleran

Amy Hawes

Karen Kelly

Kelly Keyes

Allison Lewis

Philip Miller

Lara Newell

Carraugh Nowak

Elizabeth Ortiz

John Philipsborn

Michelle Rippy

Tabitha Viner

Current MDI CB members can be viewed at:

<https://www.aafs.org/academy-standards-board/consensus-bodies>

Punchline

“We agree this is not fit for purpose at criminal trials!”

National Academy of Medical Examiners (NAME) Manner of Death Guide

“[Manner] was added to the death certificate by public health officials to assist in clarifying the **circumstances of death** and how an injury was sustained—not as a legally binding opinion—and with a major goal of assisting nosologists who code and classify cause-of-death information from death certificates for **statistical purposes.**”

A Guide For Manner of Death Classification

First Edition



National Association of Medical Examiners ®

Prepared by
Randy Hanzlick, MD
John C. Hunsaker III, MD, JD
Gregory J. Davis, MD

Approved by the NAME Board of Directors
February 2002

<https://name.memberclicks.net/assets/docs/MANNEROFDEATH.pdf>

Uses and Relies on Non-Medical Information from Law Enforcement

We can “agree to disagree-- but to not be disagreeable,” to quote New York City Medical Examiner Charles Hirsch. All agree, however, on the fundamental premise that manner of death is **circumstance-dependent, not autopsy-dependent.**

NAME, "A Guide for Manner of Death Classification" National Association of Medical Examiners. <https://name.memberclicks.net/assets/docs/MANNEROFDEATH.pdf>

Iowa Supreme Court Ruling in State v. Tyler

... the district court abused its discretion in allowing Dr. Thompson to communicate his opinions concerning the cause and manner of death ...

- The “error” here was not the death certification, but the failure of the lower court to recognize the ultimate decision maker was the jury
- This is what happens when the legal system co-opts the public health function of death certificates and manner of death

<https://law.justia.com/cases/iowa/supreme-court/2015/130588.html>

Tyler asserts the doctor's opinion,

based solely upon Tyler's statements to law enforcement officers and not his medical expertise, **invaded the province of the jury to decide credibility and factual issues.** Because we agree with Tyler, we reverse her conviction and remand for a new trial.

REVEREND JUSTICE OF THE SUPREME COURT AND CHIEF JUSTICE OF IOWA, REVEREND AND
REVEREND FOR A NEW TRIAL.

https://www.iowacourts.gov/moduledocuments/embed/23368/130588_6D97309614FBC.pdf

Why Allow Experts

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an **expert by knowledge, skill, experience, training, or education** may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:


- (a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b)** the testimony is based on sufficient facts or data;
- (c)** the testimony is the product of reliable principles and methods; and
- (d)** the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

https://www.law.cornell.edu/rules/fre/rule_702

Ending Manner of Death Testimony Tyler, 867 NW2D 136

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Ending Manner-of-Death Testimony and Other Opinion Determinations of Crime

60 Duquesne University Law Review 302 (2022)

Univ. of Wisconsin Legal Studies Research Paper No. 1737

38 Pages • Posted: 28 Jan 2022 • Last revised: 3 Jun 2022

[Keith A. Findley](#)

University of Wisconsin Law School

[Dean A. Strang](#)

Loyola University Chicago School of Law

Date Written: January 27, 2022

Abstract

Medical examiners (MEs) and coroners historically have testified in U.S. courts to opinions on both cause and manner of death. Cause of death refers to the medical, physical, or toxicological conditions that led immediately to death: heart attack, stroke, blunt force trauma, gunshot, and so on. Cause of death usually is within a pathologist's expertise and not within lay experience. But manner of death is a determination that goes beyond cause to classify the events that produced death as homicide, suicide, accident, natural, or undetermined.

<https://dsc.duq.edu/cgi/viewcontent.cgi?article=3935&context=dlr>

- Usurps the role of the jury
- **Bakes in subjective and unreliable info**
- **Bakes in potentially illegally obtained evidence (not yet litigated)**
- Testimony vouches for prosecution's theory
- Opinion re intent (the ultimate question for the jury)
- Influenced by cognitive bias

Cognitive Bias in Forensic Pathology (FP)

Some research and the
community's response...



Itiel Dror Article on Cognitive Bias in FP

Received: 26 November 2020 | Revised: 11 February 2021 | Accepted: 11 February 2021

DOI: 10.1111/1556-4029.14697

PAPER

General

JOURNAL OF
FORENSIC SCIENCES

Cognitive bias in forensic pathology decisions

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[Clarification added on 23 July 2021, after first online publication: The authors acknowledge that IRB approval for conducting this study was obtained from the University of Alabama at Birmingham Institutional Review Board.

Abstract

Forensic pathologists' decisions are critical in police investigations and court proceedings as they determine whether an unnatural death of a young child was an accident or homicide. Does cognitive bias affect forensic pathologists' decision-making? To address this question, we examined all death certificates issued during a 10-year period in the State of Nevada in the United States for children under the age of six. We also conducted an experiment with 133 forensic pathologists in which we tested whether knowledge of irrelevant non-medical information that should have no bearing on forensic pathologists' decisions influenced their manner of death determinations. The dataset of death certificates indicated that forensic pathologists were more likely to rule "homicide" rather than "accident" for deaths of Black children relative to White children. This may arise because the base-rate expectation creates an *a priori* cognitive bias to rule that Black children died as a result of homicide, which then perpetuates itself. Corroborating this explanation, the experimental data with the 133 forensic pathologists exhibited biased decisions when given identical medical information but different irrelevant non-medical information about the race of the child and who was the caregiver who brought them to the hospital. These findings together demonstrate how extraneous information can result in cognitive bias in forensic pathology decision-making.

<https://pubmed.ncbi.nlm.nih.gov/33608908/>

JFS Editor-in-Chief Preface

Received: 28 February 2021 | Accepted: 19 July 2021

DOI: 10.1111/1556-4029.14843

JOURNAL OF
FORENSIC SCIENCES

LETTER TO THE EDITOR

Commentary on: Dror IE, Melinek J, Arden JL, Kukucka J, Hawkins S, Carter J, et al. Cognitive bias in forensic pathology decisions. *J Forensic Sci.* <https://doi.org/10.1111/1556-4029.14697>. Epub 2021 Feb 20.

See Original Dror et al Article [here](#)

See Peterson et al Commentary on [here](#)

See Authors' Response to Peterson et al Commentary on [here](#)

See Peterson et al Response to Authors' Response [here](#)

See Authors' Response to Peterson et al Response [here](#)

See Gill et al Commentary on [here](#)

See Authors' Response to Gill et al Commentary on [here](#)

See Dear JFS Readers:

In my tenure as the Editor-in-Chief and Editor of the *Journal of Forensic Sciences (JFS)*, the article by Dror et al on cognitive bias in forensic pathology decisions [1] has received the most attention and generated the most commentaries and responses of any article that *JFS* has published. This is not surprising given the topic and the emotions that it can generate. In total, *JFS* received nine commentaries and the article's authors responded to all of them. *JFS* allowed the authors of two of the original commentaries to respond to the comments reviewed and then allowed the article's authors to respond to those further comments. This resulted in twenty-two letters.

See Graber Commentary on [here](#)

See Authors' Response to Graber Commentary on [here](#)

See Speth et al Commentary on [here](#)

See Authors' Response to Speth et al Commentary on [here](#)

See Obenson Commentary on [here](#)

See Authors' Response to Obenson Commentary on [here](#)

<https://onlinelibrary.wiley.com/doi/10.1111/1556-4029.14844>

See Original Dror et al Article [here](#)

See JFS Editor-in-Chief

See Authors' Responses

See Peterson et al Response

See Authors' Responses

Editor,

It was with great con

forensic pathology d

article and should b

paper. Only the most

The first, and perh

statement, unattrib

"medically irrelevant."

was a biologically unrel

grandmother.

ness [16]. Manner determination is designed to assist public health agencies and the CDC, and it is they who determine what should and should not be considered relevant. The fact that this tool for aggregate statistics often does not fit well in court is not a criticism of manner determination by forensic pathologists. It is instead a criticism of misuse of manner determination by the courts. The idea that a social determination that integrates medical findings with cultural and social context should not use cultural and social competencies is incorrect.

their work. The fact that they merely claim that this information is "medically irrelevant" without recognizing that it is considered

[https://www.docketalarm.com/cases/Virginia Eastern District Court/1--21-cv-00991/Arden et al v. National Association of Medical Examiners Inc. et al/26/19/](https://www.docketalarm.com/cases/Virginia%20Eastern%20District%20Court/1--21-cv-00991/Arden%20et%20al%20v.%20National%20Association%20of%20Medical%20Examiners%20Inc.%20et%20al/26/19/)

Maryland Audit of the Office of the Chief Medical Examiner (OCME)



<https://foxbaltimore.com/news/local/gov-wes-moore-and-attorney-general-anthony-brown-press-conference-medical-examiner-reclassifications-police-involved-death-investigations-ocme-homicide-police-brutality-blm-killed-restrained>

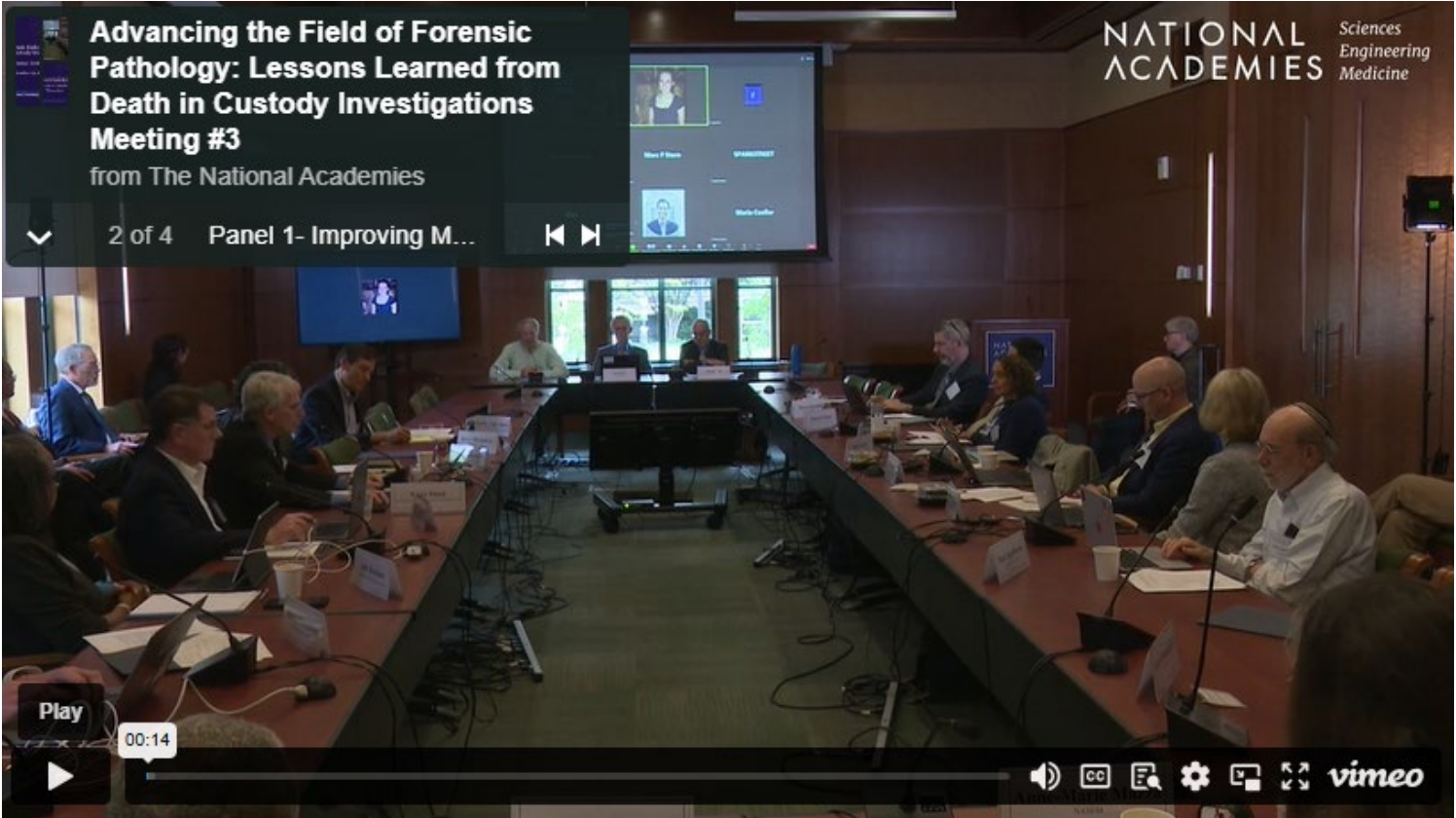
<https://www.baltimoresun.com/2021/04/30/chauvin-trial-aftermath-dr-david-fowler-and-the-case-of-the-incredible-expert-commentary/>

AN INDEPENDENT AUDIT OF **RESTRAINT-RELATED DEATH INVESTIGATIONS**

AT MARYLAND'S OFFICE OF
THE CHIEF MEDICAL EXAMINER
(OCME) FROM 2003-2019

https://oag.maryland.gov/News/Documents/pdfs/051525_OC_ME_audit_report_FINAL.pdf

National Academy of Science (NAS): Advancing the Field of Forensic Pathology: Lessons Learned from Death in Custody Investigations



<https://vimeo.com/showcase/11388672>

What the Courts Are Doing (or Not Doing) with Manner

Legal Challenges to Admission
of Manner Testimony



U.S. Caselaw

Impermissible	Depends	Permits	Unclear	
Arizona Hawaii New York Illinois Maine Montana New Jersey New York Virginia	Iowa Maine Massachusetts Nebraska Nevada Ohio Oklahoma South Dakota Tennessee Texas	Arkansas California Colorado Connecticut Delaware Florida Georgia Indiana Kansas Kentucky Maryland	Michigan Minnesota Mississippi New Mexico North Carolina North Dakota Pennsylvania Rhode Island South Carolina Utah Vermont West Virginia Wyoming	Alabama Alaska Idaho Louisiana Missouri New Hampshire Oregon Washington Wisconsin

New York

People v. Creasy – 236 N.Y. 205

People v. Eberle – 265 A.D.2d 881

People v. Creasy: “Error ... in permitting [medical expert] to testify ... that in their opinion the wound was not self-inflicted. **This was equivalent, under the facts of this case, to permitting them to testify the defendant was guilty.**”

People v. Eberle: “The expert’s statement that the infant died from ‘homicidal’ suffocation improperly states a **conclusion regarding defendant’s intent.**”

Hawaii – State v. Pinero

70 Haw. 509 (1989)

“The questions put to the witnesses and the answers they gave were plainly beyond the intendment of the rule; the questions were conclusionary, and **the answers told the jury what result to reach**. Moreover, the opinions were ‘phrased in terms of **inadequately explored ... criteria**’ related to criminal homicide.”

South Dakota – State v. Boyer

741 N.W.2d 749 (2007)

Admissible, so long as the testifying expert is qualified, their opinions are **based upon forensic findings or science**, and their opinions are expressed to a **reasonable degree of scientific certainty**.

Connecticut – State v. Berrios

187 Conn.App. 661 (2019)

“[ME] had **a statutory obligation** to identify the cause and manner of death, and that defense counsel could cross-examine [the ME] as to whether her ultimate conclusion of homicide was based on the police investigation. [The trial court] also determined that the objections went to the **weight, and not the admissibility** of the [ME’s] testimony.”

“ME’s determination of manner of death was based on her medical knowledge and expertise, and **not solely or primarily** on the police reports.”

Iowa – State v. Tyler

867 n.w.2d 136 (2015)

“In reaching the above conclusion, **we do not create a bright-line rule** to govern every criminal case in which a medical examiner is called to testify to a victim's cause or manner of death. **Nor do we conclude medical examiners may never rely** in part on witness statements or information obtained from police in forming their opinions. In this case, however, Dr. Thompson conceded he was **unable to form an opinion on the cause or manner** of Baby Tyler's death based on the autopsy and his investigation.”

What to Do?

My Humble Suggestions



Prosecutors Shouldn't Ask Speak with Your Evidence Proponent



<https://ktvz.com/shop/ask-the-expert/>



<https://www.imdb.com/title/tt0104952/mediaviewer/rm3998879488/>



<https://www.imdb.com/title/tt0104952/>



<https://mielderlaw.com/plan-to-be-100/judge-rips-lawyers-and-gets-reversed-but-not-removed/>

What is Brady??

- Exculpatory information must be provided to the defense
- It is not an even adversarial system
- Include **exculpatory** evidence
- AND impeachment evidence
- AND evidence that goes to credibility, sentencing, etc.



<https://www.themarshallproject.org/2018/06/24/an-odd-almost-senseless-series-of-events>

1. Document Your Process

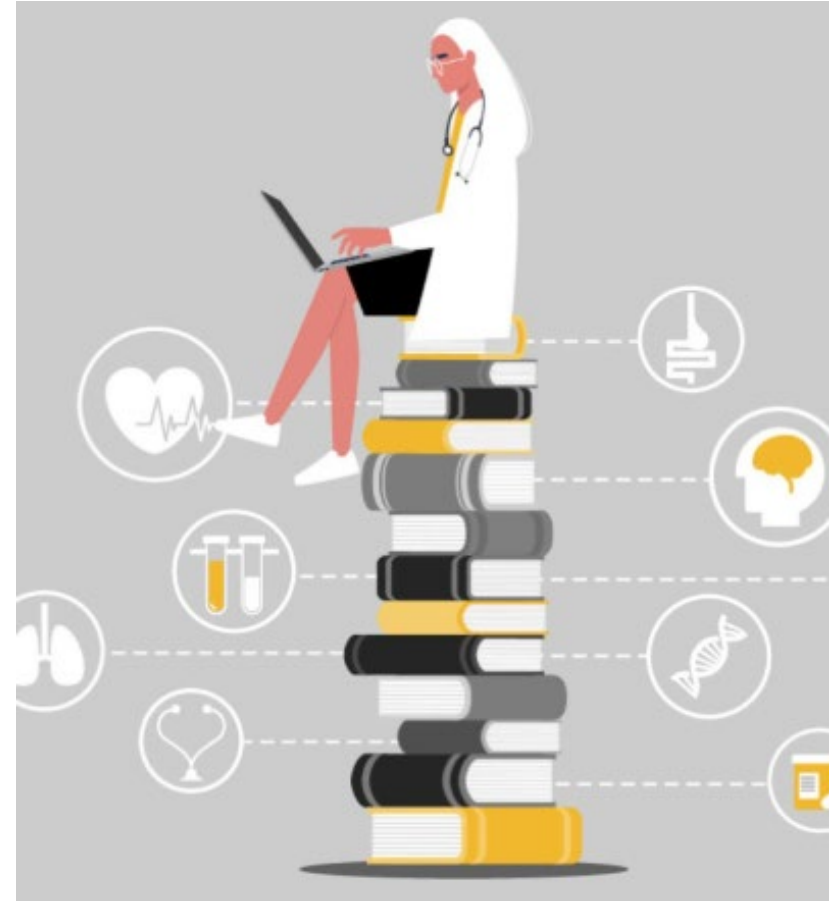
- **Detail and Document** what information was received, when, AND how it impacted work
- **Share** all the documentation with the prosecution AND the defense (unless barred by confidentiality)
- **Meet with** the prosecution AND the defense pretrial



Microsoft 365 Stock Photo

2. Indicate Doubt or Uncertainty

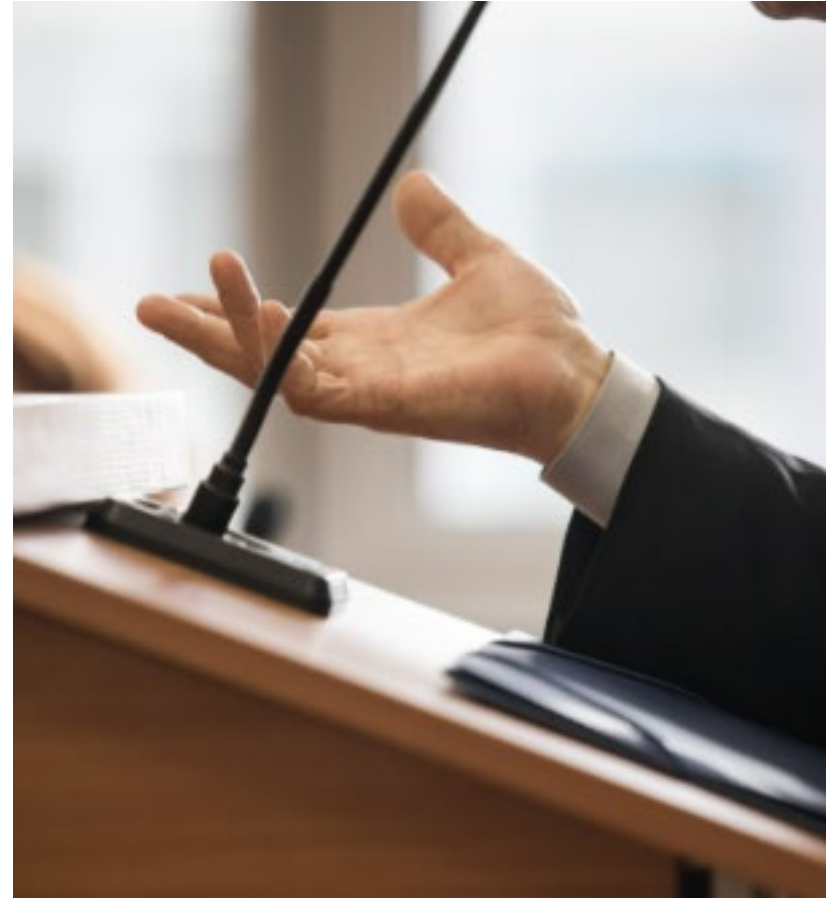
There is a difference between a Gunshot Wound (GSW) to the back of the head on video versus a baby death without obvious trauma – DOCUMENT YOUR CONFIDENCE LEVEL OR UNCERTAINTY



<https://livehealthy.muhealth.org/stories/diagnosis-limbo-what-happens-when-doctors-dont-know-whats-wrong>

3. Don't Testify About MOD (Or Qualify It)

- REFRAIN FROM TESTIFYING ABOUT IT:
 - “That’s not an appropriate question.”
 - Tell the prosecution in your pretrial to not ask
 - Tell the defense in your pretrial to object
- AND/OR QUALIFY YOUR ANSWER:
 - “The homicide determination is NOT a legal finding and incorporates [nonmedical contextual facts].”



https://www.fklaw.com/media/publication/59_Corpoate%20Disputes%20Reprint%20-%20July%202023.pdf

Testimony Tips

More Humble Suggestions



Answer the Question Asked

- Easy to anticipate the argument behind questions...
- Qualify if you need to but think about the question in isolation
- Q: “Isn't it true that this level of toxicity could be fatal?”
- A: “Yes but it wasn't the cause of death here...”
- A: “Yes” - - no buts



<https://www.imdb.com/title/tt0104952/>

Stay in Your Lane

- Don't opine beyond your expertise
- If your expertise is tires, don't opine about cars
- Be clear in the basis for your opinion, any limitations
- Keep an internal check on yourself and maintain composure on cross
- Remember your independence and be faithful to the methodology



<https://www.imdb.com/title/tt0104952/>

Trust the Method

- Trust the EVIDENCE in all its glories and limitations
- Trust the JUSTICE SYSTEM to put it in context of other evidence
- Trust your PROPONENT and bring any concerns to them *before* trial (and please document and insist it's a part of the record)



<https://www.imdb.com/title/tt0104952/>

Thank You!

Special thanks to...

- Dr. Andrew Baker, Hennepin County
- The Legal Aid Society, DNA Unit
- MDI ASB Consensus Body
- BJA and the Forensics TTA Team (especially Kelly Keyes and Kathryn Greenwell)!



**THE
LEGAL AID
SOCIETY**

Justice in Every Borough.

Image provided by presenter

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Questions or Feedback?

Please direct any questions or feedback to the Forensics TTA Team at ForensicsTTA@rti.org.