

International Conference On
MEDICAL SERIAL MURDER

Hosted at
John Jay College of Criminal Justice
New York City

Hosted by
Investigative Psychology Research Unit
Society of Professional Investigators

MARCH 20, 2020

OPENING REMARKS

C. Gabrielle Salfati, PhD

Director, Investigative Psychology Research Unit
John Jay College of Criminal Justice

Bruce Sackman

Society of Professional Investigators

~ KEYNOTE SPEAKER ~

The Honorable Michael A. Ponsor
Senior U.S. District Judge, District of Massachusetts

CRITICAL ISSUES IN THE TRIAL OF A CAPITAL MEDICAL SERIAL MURDER CASE

Introduction and Background. A detailed overview of the facts involved in *United States v. Kristin Gilbert* case will be provided, along with a description of an earlier trial in which Gilbert had been tried and convicted for phoning in a phony bomb threat to the hospital. A review of the indictment's allegations that Gilbert had murdered four of her patients, and attempted to murder three others by injecting them with massive doses of Epinephrine, will also be covered.

The Pretrial Phase. The talk will also cover the special procedures for the appointment of defense counsel and appointment of defense experts (including a mitigation expert); the establishment of a budget and methods to review defense expenditures; the defense's unsuccessful attempt to get the DOJ to reconsider the capital designation; the pre-trial motions (more than 250) and how they were handled; the interlocutory appeal; and, the management of pretrial publicity.

Jury Selection. The jury selection process will be described, including the preparation of the jury questionnaire; first assembly of the jury pool at Springfield's Symphony Hall; modification of the jury box to accommodate twelve jurors and six alternates; the month-long process of individual voir dire; and, the final jury composition.

The "Guilt" Phase. The extensive, innovative use of in-court computers and video screens to present complex medical evidence (rare in 2000-2001) will be discussed, as well as the collapse of the government's key expert; evidentiary issues regarding the testimony of the Defendant's spouse; the extremely lengthy jury deliberations; and, the ultimate convictions.

The "Penalty" Phase. Unique evidentiary issues were presented in the penalty phase. The talk will give an overview of this phase, including the split decision on death penalty, and the imposition of life without possibility of parole.

Conclusion. The talk will conclude with a discussion of the moral and emotional pressures inevitable in a capital trial for witnesses, attorneys, and jurors, as well as victims' and Defendants' family members, and the judge. The looming issue of possible error will also be covered.

Speaker Information

Michael A. Ponsor was born in Chicago, Illinois in 1946 and received his B.A. *magna cum laude* from Harvard College in 1969. While an undergraduate, he spent one year teaching at the Kenya Institute of Administration in Nairobi, Kenya. From 1969 to 1971, Ponsor read English Language and Literature at Pembroke College, Oxford University, England, as a Rhodes Scholar. He received his law degree from Yale Law School in 1975 and clerked for the Hon. Joseph L. Tauro in the District of Massachusetts.

Following his clerkship, Ponsor practiced criminal law at Homans, Hamilton & Lamson in Boston and general civil and criminal litigation in his own firm, Brown, Hart & Ponsor, in Amherst, Massachusetts. From 1984 to 1994, he served as a U.S. Magistrate Judge in the U.S. District Court's Western Division in Springfield. In 1993, he was nominated by President Bill Clinton as a U.S. District Judge and, after confirmation by the Senate, was sworn in on March 14, 1994. In 2011, he took senior status and began handling a reduced docket.

The Western Division, where Judge Ponsor has served for thirty-five years, includes the four counties of Western Massachusetts, comprising some 800,000 people and 100 cities and towns. His caseload has included many high-profile trials, including *U.S. v. Gilbert*, which lasted five months and was the first death penalty case in Massachusetts in more than fifty years, and *U.S. v. Jacques*, in which three young white men were convicted of torching an African-American church in 2008 in retaliation for the election of Barack Obama.

He has served on three national Judicial Conference committees: the Committee on the Administration of the Magistrate Judge System (1998-2004); the Committee on the Budget (2005-2007); and, as Chair, the Committee on Space and Facilities (2009-2013). He had a lead role in the design and construction of the new Springfield federal courthouse, which opened in 2008.

Ponsor has taught as an adjunct professor at Yale Law School, Western New England School of Law, and the University of Massachusetts. He coedited and wrote two chapters in the handbook *Civil Litigation in the First Circuit* (Massachusetts Continuing Legal Education, Boston, 1994) and also authored articles in *The Boston Globe*, *The Wall Street Journal*, the *Federal Sentencing Reporter*, the *American Bar Association Journal*, and the *Western New England Law Review*. In December of 2013, the New York publisher Open Road Media released his first novel, *The Hanging Judge*, which went on to be a *New York Times* bestseller.

Judge Ponsor received the Legal Writing Institute's 2015 "Golden Pen" award for the high quality of his legal writing. In 2017 his second novel, "The One-Eyed Judge" was published. He lives in Amherst, Massachusetts and continues to handle substantial judicial duties while working on his next novel.

Michael M. Baden, M.D.

Former Chief Medical Examiner of New York City
Former Chief Forensic Pathologist for the New York State Police

THE ROLE OF THE FORENSIC PATHOLOGIST IN INVESTIGATING SERIAL HOSPITAL MURDERS

This lecture will describe how doctors, nurses, respiratory therapists, researchers and even a medical student were able to intentionally kill a number of patients before being discovered. Such deaths are not caused by obvious gunshot wounds, stabbing or blunt trauma, but rather, by the invisible administration of potassium, adrenaline, insulin, curare, Pavulon and succinylcholine. And after the death is discovered, the scene is scrubbed clean with rapid removal of the body together with all intravenous lines, needles, syringes and discarded medication vials, and other forensic evidence.

Any investigation is delayed because the first homicides by a serial murderer in a hospital are misattributed to having been caused by the natural illness for which the patient was admitted. Usually many deaths have occurred before concern is raised about possible homicides. The suspected victims have been cleaned, embalmed and buried or cremated. Usually an autopsy has not been performed. The deaths may have occurred weeks, months or years earlier.

Exhumation and autopsy may be necessary to determine whether the attributed natural cause of death is confirmed or whether there is proof of poisoning. Close cooperation between the pathologist and the toxicologist is necessary to make that determination.

If an investigation is begun, certain legal and ethical questions must be addressed. When should the next of kin be informed of such suspicions? Is family permission necessary to exhume a body in order to determine if a homicide has occurred and for the purpose of protecting other patients? What is the responsibility of the forensic scientist, if after confirming that patients were killed, the perpetrator is simply discharged for employment elsewhere without informing the family or prosecutor, as has happened because such publicity may cause the hospital to close?

Speaker Information

Michael Baden received an M.D. degree from NYU Medical School, trained in internal medicine and pathology at Bellevue Hospital, and then joined the staff of the NYC Medical Examiner's Office. He remained there 25 years, became Chief Medical Examiner, and then was appointed the Chief Forensic Pathologist for the New York State Police. He taught forensic pathology at NYU Medical School, Einstein Medical School, Albany Medical School, New York Law School and John Jay College of Criminal Justice.

He was Chairman of the Forensic Pathology Panel of the U.S. House of Representatives Select Committee on Assassinations in the 1970s that re-investigated the deaths of President John F. Kennedy and Dr. Martin Luther King, Jr. He examined the remains of Tsar Nicholas II, Alexandra and the Romanov family discovered in Siberia in the 1990s for the Russian government. More recently, he examined the exhumed bodies of Lech Kaczynski, the President of Poland, his wife and other Polish

officials who had died in 2010 when their airplane crashed while landing in Russia to commemorate the 70th anniversary of the Katyn Forest massacre by Russia of more than 20,000 Polish officers in World War II.

Dr. Baden was appointed by Gov. Nelson Rockefeller in 1973, and reappointed by every governor since, to be the forensic pathologist member of the NYS Correction Commission Medical Review Board that investigates all deaths that occurs in jails, lockups and prisons in New York State. He has been a consultant to the FBI, DEA, Dept. of Justice, Veterans' Administration and the Innocence Project.

HOMICIDAL POISONING IN THE HEALTHCARE SETTING

Postmortem toxicology testing can determine if drug use or exposure was a direct or contributory cause of death. From a toxicological perspective, alleged or suspected poisoning in a healthcare setting can be challenging to confirm analytically. Because deaths may occur over an extended time prior to investigation, specimen types and quantities may be limited and their physical conditions less than ideal.

Toxicology laboratories also contend with not having readily available methods for the detection of all substances that care providers administer including, but not limited to, insulin, epinephrine, heparin, and respiratory paralyzing agents. It is important, therefore, that scientific efforts continue to focus on the development of robust analytical methods capable of withstanding scientific and legal scrutiny.

Even with a positive analytical result, interpretation tends to be complex because the victim population includes those with confounding variables such as pre-existing clinical conditions, and physical and metabolic declines associated with aging and/or severe illness. In some circumstances, the existence of a competent cause of death can translate to an indeterminate explanation as to the final effect of a drug.

This presentation will discuss the current state of the toxicology challenges associated with these cases while outlining strategies that medico-legal death investigators can utilize during their investigative processes.

Speaker Information

Dr. Laura M. Labay is a Forensic Toxicologist and the Director of Toxicological Services at NMS Labs. She earned a Bachelors degree in Biochemistry and Molecular Biology from the University of California at Santa Cruz, and Masters and Doctorate degrees in the field of Toxicology from the University of Rochester. Dr. Labay worked for several years at the New York City Police Department – Forensic Investigation Division before joining NMS Labs in 2000. At the NYPD some of her responsibilities included analyzing evidentiary material for the presence of controlled substances and testing blood samples for DUI investigation purposes. As a Forensic Toxicologist, Dr. Labay reviews all types of cases (e.g., postmortem, DUI/DUID, Drug Facilitated Crime, etc.), and authorizes the release of reports from the laboratory and helps to interpret results. She has been qualified numerous times in several courts throughout the country as an expert in forensic toxicology. In addition, she is a member of several professional organizations including the American Academy of Forensic Sciences (Toxicology Section), the Society of Forensic Toxicologists (SOFT), and the National Association of Medical Examiners (NAME). Dr. Labay is the Toxicology Co-Chair for NAME, an Instructor at the Center for Forensic Science Research and Education, and an Advisory Board Member for the Professional Science Master's Program in Forensic Toxicology for Jefferson College of Biomedical Sciences and The Center for Forensic Science Research & Education. Dr. Labay is Board Certified by the American Board of Forensic Toxicology (ABFT) and the American Board of Clinical Chemistry (ABCC) in the area of Toxicological Chemistry.

Bruce Sackman

Special Agent in Charge
US Department of Veterans Affairs
Office of Inspector General (Retired)

DR. MICHAEL SWANGO AND THE RED FLAGS OF MEDICAL SERIAL KILLERS

This talk will detail the career and activities of one of the most prolific medical serial killers in American History, Dr. Michael Swango who was convicted of killing 4 patients but suspected of killing over 60. It will also review the red flags protocol designed to inform medical staff and law enforcement on how to identify these perpetrators.

Speaker Information

Bruce Sackman served as the Special Agent in Charge, U.S. Department of Veteran Affairs (VA), Office of Inspector General, Criminal Investigations Division, Northeast Field Office until May 2005 when he retired after 32 years' service. In this capacity, he was responsible for all major criminal investigations involving VA from West Virginia to Maine. During his tenure he was involved in hundreds of investigations involving allegations of fraud, corruption, false claims, thefts, patient assaults, pharmaceutical drug diversions and suspicious hospital deaths. He was also responsible for supervising the successful investigation of the nation's first homicide conviction in connection with pharmaceutical research. His cases involving medical professionals who have murdered their patients have been featured on the Discovery Health Channel, CNN, MSNBC, America's Most Wanted and on Home Box Office. He is the recipient of many awards for his investigations and for his efforts in encouraging the profession of forensic nursing. Mr. Sackman has lectured at several forensic related conferences, State police organizations, the Federal Law Enforcement Training Center, universities and medical related symposia.

Mr. Sackman is the co-author of the book *"Behind the Murder Curtain, Special Agent Bruce Sackman Hunts Doctors and Nurses Who Kill Our Veterans"* and the article *"When the ICU becomes a Crime Scene"* for Critical Care Nursing Quarterly. He is also the author of the upcoming textbook *the Art of Investigations* to be released in early 2020.

Mr. Sackman is currently self-employed as a licensed private investigator in New York City specializing in healthcare related matters. Under contract he directs major investigations for a large New York metropolitan regional healthcare system. He is the President of the Society of Professional Investigators in New York City and is a board member of the American Academy for Professional Law Enforcement. He is also a frequent lecturer on the topic of medical serial killers having spoken through the United States, Great Britain, UAE, and Sweden.

Arne Schmidt

Chief of Cuxhaven County Police Department, Germany

THE NIELS HÖGEL CASE – MEDICAL SERIAL MURDER

When you go to a hospital you anticipate care, and they depend on, and trust in, the skills of the doctors and nurses on staff. Sick and vulnerable people put their lives in the hands of these professionals - but what happens when a person's care is not their utmost priority? This talk will describe the case of Niels Högel, a German nurse-turned-serial killer that was active for nearly six years before being apprehended. Högel was convicted of 85 murders, but has since been accused of 106, and is suspected of killing over 300 people. The talk will explore the investigating, apprehending, and bringing to justice Germany's most prolific killer in modern history, and will dive into the question: Why didn't anybody stop him?

Speaker Information

Arne Schmidt has been a police officer for over 30 years, and is currently the Chief of the Cuxhaven County Police Department in Germany. In his role he is responsible for the city and district of Cuxhaven and it's approximately 200,000 inhabitants, as well as the Cuxhaven County Police Department's 380 employees. Prior to his appointment as Chief he was the Head of the Special Investigation-Unit "Kardio" from October 2014 to August 2017. In 2005 an investigation was started looking into Niels Högel and his possible connection and responsibility for numerous complications, resuscitations, and further unexplained deaths at the hospital where he was employed as a nurse. During his time in the Kardio unit, a major investigation into further deaths during Högel's stint as a nurse was launched, and Arne Schmidt was the Responsible Chief-Investigator for all investigation in connection with Niels Högel, and retains this title to this day.

Beau Woods

Leader, I am the Cavalry
Cyber Safety Innovation Fellow, Atlantic Council

FUTURE OF HEALTHCARE SECURITY

The healthcare ecosystem is undergoing multiple concurrent and interdependent revolutions, with the potential to save and improve billions of lives in the coming decades. Yet new technologies give rise to new failure modes, accidents, and adversaries, that cannot be perfectly anticipated or prevented. Delaying or denying these innovations to secure them will cost lives, yet if we are cavalier, cyberattacks may lead to the same outcome and may even trigger a crisis of confidence in the healthcare profession. What types of legal and social issues will accompany the emergence of the blending of healthcare with cybersecurity, how will we adapt to them, and at what point will we experience the first deaths (or have they already happened)?

Speaker Information

Beau Woods is a Cyber Safety Innovation Fellow with the Atlantic Council, a leader with the I Am the Cavalry grassroots initiative, and Founder/CEO of Stratigos Security. His work bridges the gap between the security research and public policy communities, to ensure connected technology that can impact life and safety is worthy of our trust. Over the past several years in this capacity, he has consulted with the healthcare, automotive, aviation, rail, and IoT industries, as well as cyber security researchers, US and international policy makers, and the White House.

Beau was Deputy Director of the Cyber Statecraft Initiative and is now a Cyber Safety Innovation Fellow with the Atlantic Council, a non-partisan, non-profit public policy think tank focused on issues of international security and strategy. Beau founded the security consultancy, Stratigos Security, in 2012 to advise large enterprises, small business, and NGOs on information security strategy and development. Prior to that, Beau spent five years with Dell SecureWorks, where he advised commercial clients on information security and built up the security consulting services practice. Beau also served as an Entrepreneur in Residence with the US Food and Drug Administration, advising on cyber policy issues.

Beau supports several non-profit initiatives from and by the security research community. He is a leader with the global, grassroots I Am The Cavalry initiative, to ensure technology that can impact human life and public safety is worthy of our trust. Beau is on the board of the Biohacking Village, which celebrates global health ingenuity arising from maker communities, and runs its Device Lab, a high-trust, high-collaboration environment for medical device security research. He is a Founding Member of the ICS Village, which equips industry and policy makers to better defend industrial equipment through experimental awareness, education, and training. He is on staff and leads the I Am The Cavalry and Public Ground tracks at BSides Las Vegas, and in 2019 helped launch the Aviation and Hack the Sea Villages at DEF CON.

Beau is a frequent presenter, media contributor, and author, and graduated from the Georgia Institute of Technology with a BS in Psychology.

Beatrice Crofts Yorker Schumacher, JD, RN, MS, FAAN

Professor of Nursing

Criminal Justice and Criminalistics California State University, Los Angeles

WHAT THE DATA TELLS US ABOUT MEDICAL SERIAL MURDER

The number of healthcare providers prosecuted for serial murder of patients in their care has increased since our 2006 article in the *Journal of Forensic Sciences*, from 90 to 145. Our updated data shows that the number of HCSKs in the USA decreased from 75% (12 out of 16) of the prosecutions in the 1980's, to 23% (12 out of 60) during 2000-2010 and 19% (6 out of 32) of the prosecutions worldwide since 2010. The vast majority, 86% of HCSKs were committed by nursing personnel. Improvements in death review, anonymous reporting systems for whistle-blowers, routine surveillance of patient adverse incidents and electronic medical records aligned with bar-code medication administration may all have contributed to the reduction in HCSKs in the USA. This talk will go over the changes in locations, methods and motives of HCSKs and will provide updates regarding efforts to deter, detect and prevent these alarming risks in hospitals, long term care and home health. The recommendations from the Public Inquiry into Long Term Care as a result of Elizabeth Wettlaufer confessing to murdering her patients with Insulin overdoses will be presented.

Speaker Information

Beatrice Crofts Yorker Schumacher has been studying the phenomenon of serial murder by healthcare professionals since 1986. Her first article: "*Nurses Accused of Murder*" was published in the *American Journal of Nursing* in 1988. As a result of her early publications, other HCSK researchers joined her subsequent research and article in *JFS*. She served as an expert witness on HCSKs for the Ontario, Canada government Long Term Care Inquiry commissioned in the wake of public concern regarding how Elizabeth Wettlaufer was able to commit and go undetected for many years of committing murders. Beatrice has a lengthy academic career in Georgia and California, publishing extensively on crime in hospitals, Munchausen by Proxy, and HCSK. Beatrice retired as Dean of the College of Health and Human Services at California State University in 2015 and she is currently Professor Emerita of Nursing, Criminal Justice and Criminalistics.