

County findings in death cases provoke unending debate 3 rulings on cause draw criticism in science that's ultimately inexact

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By Gene Warner

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For the second time in a couple of months and the third time in two years, the Erie County medical examiner's office has come under a public microscope.

Defense attorneys, victims' relatives, other pathologists and law enforcement officials have questioned the findings of Dr. James J. Woytash and his staff in three highly visible cases.

Those critics ask:

* How could Amanda L. Wienckowski, 20, with her blond hair shorn off and her naked body found upside down in a garbage tote, have died from accidental causes?

* Why did Woytash's staff provide enough evidence for prosecutors to obtain an indictment charging the father of 7-month-old Abbigail V. Kirchner with killing her, yet other pathologists found the infant's head injury insignificant in her death?

* And why did Woytash, 15 years after the death of 13-year-old Crystallynn M. Girard, sign off on findings she may have died of cocaine intoxication, rather than the original finding that she was strangled?

No one can categorically disprove Woytash's findings in any of these cases. In each one of them, the cause of death may be debated for years.

But his office's decisions have come under increasing fire.

"Crystallynn Girard, Amanda Wienckowski, Abbigail Kirchner. The pain inflicted by the Erie County medical examiner's office is incalculable," attorney Steven M. Cohen, Woytash's chief critic, has said.

"Certainly, there is an erosion of confidence in the medical examiner's office," Cohen added Tuesday. "Everyone has an interest in seeing that that confidence is restored."

> Both art and science

Erie County's health commissioner, Dr. Anthony J. Billittier IV, speaking for Woytash, has a starkly different view.

"For the critics who are not forensic pathologists, I do not find any validity to their criticism, because they are not trained physicians," Billittier said. "The medical examiners make their determination based on what they see in the morgue, not on what the police believe or what the police find."

Asked about Cohen's criticisms, Billittier replied, "I do not think Mr. Cohen is any more qualified to judge how competent our forensic pathologists are than our pathologists are able to judge how good an attorney Mr. Cohen is."

Forensic pathology -- determining the cause and manner of death -- is not an exact science. As these three cases suggest, this is tricky business, with the same physical evidence leading various experts to different, but legitimate, conclusions.

The public may be bewildered that highly qualified pathologists can differ so much on an autopsy finding. But Charles P. Ewing, a forensic psychologist and University at Buffalo law professor, said he has learned that forensic pathology is both art and science.

That's especially true when it comes to determining not only the cause, but the manner, of death. For example, Ewing cited a real case of a person stabbed more than 30 times. The cause of death obviously was multiple stab wounds, but was it a homicide or suicide?

"In a lot of cases, there is not a scientific, objective answer," Ewing said. "In the final analysis, these are opinions, not facts."

Here are the three high-profile cases in question:

> Abbigail Kirchner

Friday, a Niagara County judge granted a request by prosecutors to dismiss a manslaughter indictment against the infant's father.

The case against the father depended largely on Woytash's conclusion that the little girl suffered blunt-force trauma to the head four to six hours before her May 2009 death. But the medical examiner could not determine whether it was an accident or a homicide.

The father, Jason K. Kirchner, has said his daughter fell off a couch and struck her head on a table the day before her death.

His defense attorney, Michele G. Bergevin, contended that a New Jersey forensic

pathologist would have testified at trial that Woytash's methods were "not scientifically reliable" and "a completely inaccurate way of proving time of injury."

In seeking to dismiss the case, prosecutors did not question Woytash's findings. But they acknowledged that the fatal injuries could have been accidental and that they no longer could prove the father's guilt beyond a reasonable doubt.

Citing the New Jersey pathologist's findings, Cohen said he believes that the medical examiner's office gave faulty data to the Niagara County prosecutors.

Billittier, though, questioned the use of "outside" paid experts.

"There's a selective bias there," the health commissioner said. "You can find an expert, often from out of town, who will say what you believe and is automatically considered more of an expert than the person from here."

> Amanda Wienckowski

Woytash was one of four medical examiners from his office who signed an autopsy report finding that Wienckowski's death was accidental, caused by opiate intoxication. Her body was found in January 2009 in a garbage tote next to a church on Buffalo's East Side.

The young woman's family, attorney Cohen and a retired Buffalo homicide detective, Dennis A. Delano, all have questioned those findings, after a West Coast pathologist, Dr. Silvia O. Comparini, conducted a second autopsy, which suggested that she was strangled. That California doctor belongs to a group of forensic pathologists known as 1-800-AUTOPSY.

All of the young woman's injuries were consistent with a vicious physical attack, Cohen has said, adding that he believes she was beaten and strangled.

Billittier, however, said that many of the marks on Wienckowski's body were consistent with what would be expected on a person who has died, been frozen and then found in a garbage tote.

The health commissioner said that there were many signs suggesting she wasn't strangled: Her hyoid bone was intact. The muscles in her neck were not bruised. And, as far as he knows, there was no hemorrhaging in her eyes.

"I think the medical examiners are saying there is no evidence to suggest she was strangled," Billittier added. "It doesn't mean she wasn't strangled."

> Crystallynn Girard

The girl's mother, Lynn M. DeJac, served 13-plus years in prison after having been convicted of strangling her in 1993. But DeJac was freed and her murder conviction overturned after DNA evidence found on the girl's body suggested another killer.

Then, in a final twist to the case, pathologists Woytash and Dr. Michael M. Baden determined that Crystallynn may have died from acute cocaine intoxication and wasn't strangled, as the 1993 autopsy had suggested.

Family members and others still question the contention that Crystallynn was not a homicide victim.

Billittier doesn't see how Crystallynn's case is relevant to this discussion. The original autopsy was performed by other medical examiners.

Cohen, though, questioned the recent autopsy conclusion, when a finding of strangulation could have pointed to a suspect who had been granted immunity during the initial investigation.

"That's when I lost respect for Dr. Woytash, when he signed off on Dr. Baden's report," Cohen said. "Everyone realizes that Crystallynn Girard was murdered."

Woytash has a strong defender in Erie County District Attorney Frank A. Sedita III.

"I think Dr. Woytash is a good man and a good medical examiner," the district attorney said. "I've had [many] cases with him, and he's always given it to me straight. When you have a controversial cause or manner of death, he called it as he saw it. He didn't give you a pro-prosecution or pro-defense opinion."

> 'It's part of the job'

In eight years as Homicide Bureau chief in the district attorney's office, before he assumed the top spot, Sedita cited 225 homicide prosecutions in his office, with 220 leading to convictions or pleas. Many of those cases occurred with Woytash at the helm of the medical examiner's office.

"The numbers speak for themselves," Sedita said. "When Jim Woytash tells me I have a criminal case, 98 percent of the time we get a conviction."

But what about the three cases that have put the medical examiner's office in the spotlight?

"I think when you're in the public eye working on these high-profile cases, people will criticize you," Sedita said. "It's part of the job, and the people criticizing you generally are defense attorneys who are advocating for their clients."

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