

National Tribal Trial College



UNIVERSITY of
WISCONSIN
LAW SCHOOL



School of Medicine
and Public Health

UNIVERSITY OF WISCONSIN-MADISON

*Materials by Hallie Bongar White and Dr Jamie Kallan
Presented by Hallie Bongar White and Dr Jamie Kallan
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Hallie White

- Mother, Grandmother, In-law, and Ally – Citizen Potawatomi Nation
- National Tribal Trial College
- OVW TTA TAD
- SAFESTAR
- MMIWR Work: Arizona Report
- “The 2nd M”

“The Personal is Political”

- SIDS
- Interstate 10 in Cochise County: challenging autopsies
- Public Defender: Outsiders Can Attend
- Bahyesva v. United States – United States Supreme Court 2000
- Chevra Kadisha – Cultural Taboos
- San Carlos Apache Tribe-In Loving Memory of Eleanor Roehrig
- Friends, Family & Community

“Recovered Deceased”: SHAUN

- Suicide
- Homicide
- Accident
- Unknown
- Natural

ALL autopsies are conducted by state authorities

- *Even if death occurred on tribal lands*
- *Even if death occurred on federal lands*
- *Even though state and local governments have historic enmity*
- *Even though disincentive financially for medical examiners and coroners to perform:*
Lake County
- *Why?*

Medical Examiners and Coroners: Qualifications

- *No cultural competency requirements*
- *Coroners as Gatekeepers*
- *Coroners may have zero forensic examination training*
- *Different views on death, “human remains” etc.*

Religious Freedom Objections

- Do the interests of government (particularly when it involves investigations of possible crimes) outweigh religious rules and beliefs?
- 1st Amendment doesn't apply in Indian Country (ICRA)

LOCAL

American Indians' autopsy protests lead to a teachable moment

After scrambling to head off two autopsies, tribal advocates urge public officials to honor Indian religious traditions.

By **Maya Rao** Star Tribune | APRIL 13, 2015 — 11:10PM

Two deaths in Carlton County have spurred intense discussions about American Indians' right to decline an autopsy for loved ones when it violates their religious beliefs.

Tribal advocates have called for local officials to be better trained in native customs after court orders were needed to prevent autopsies on the bodies of Mushkoob Aubid, a spiritual leader of the Mille Lacs Band of Ojibwe, and Autumn Martineau, a member of the Fond du Lac Band of Lake Superior Chippewa.

Both died recently in separate car accidents in northern Minnesota.

"There needs to be some additional understanding of the ... folks that were here in the state before the Europeans came, and some respect for their belief system, even if it's not fully understood," said Tadd Johnson, an attorney who also heads the American Indian Studies Department at the University of Minnesota Duluth.

In both instances, the deceased and their families practiced Midewiwin, a religion that requires a body to be preserved intact for burial four days after death and holds that the spirit of the person travels everywhere they've ever been during that period. Johnson acknowledged that the religion isn't well-known outside of tribal communities, partly because Indians historically hid many of their cultural practices from public view after past attempts to forcibly assimilate them.

"The fact that not many people know about Midewiwin is understandable, because that's somewhat by design," he said. "The medical examiner says he's never come upon this before, and I believe him."

“Compelling interest balancing test”

- Seven states have strong laws allowing for religious objection to an autopsy:
 - California
 - Maryland
 - New Jersey
 - New York
 - Ohio
 - Rhode Island
 - Minnesota.

Accommodations

- “virtual autopsies”
- “kosher autopsies”
- victim rights representative
- medicine person present
- training/implementation of more culturally appropriate procedures

Introduction: Dr. Jamie Kallan

My husband and the paternal side of his family are a part of the Sault Ste. Marie Tribe of the Chippewa Indians from Michigan (Turtle Clan)

Education

- Undergraduate degree and medical school at the University of Wisconsin in Madison.
- Residency training in Anatomic and Clinical Pathology in Denver, Colorado
- Fellowship training in Forensic Pathology at the Miami-Dade County Medical Examiner Department
- After graduating from high school, underwent 13 years of education/training (**25 years total**)

Work History

- Board certified in anatomic, clinical, and forensic pathology
- Worked at the Utah Office of the Medical Examiner in Salt Lake City, Utah for ~3 years
- Currently employed as a forensic pathologist and assistant professor at the University of Wisconsin School of Medicine and Public Health (~2 years)

Shortage of Forensic Pathologists

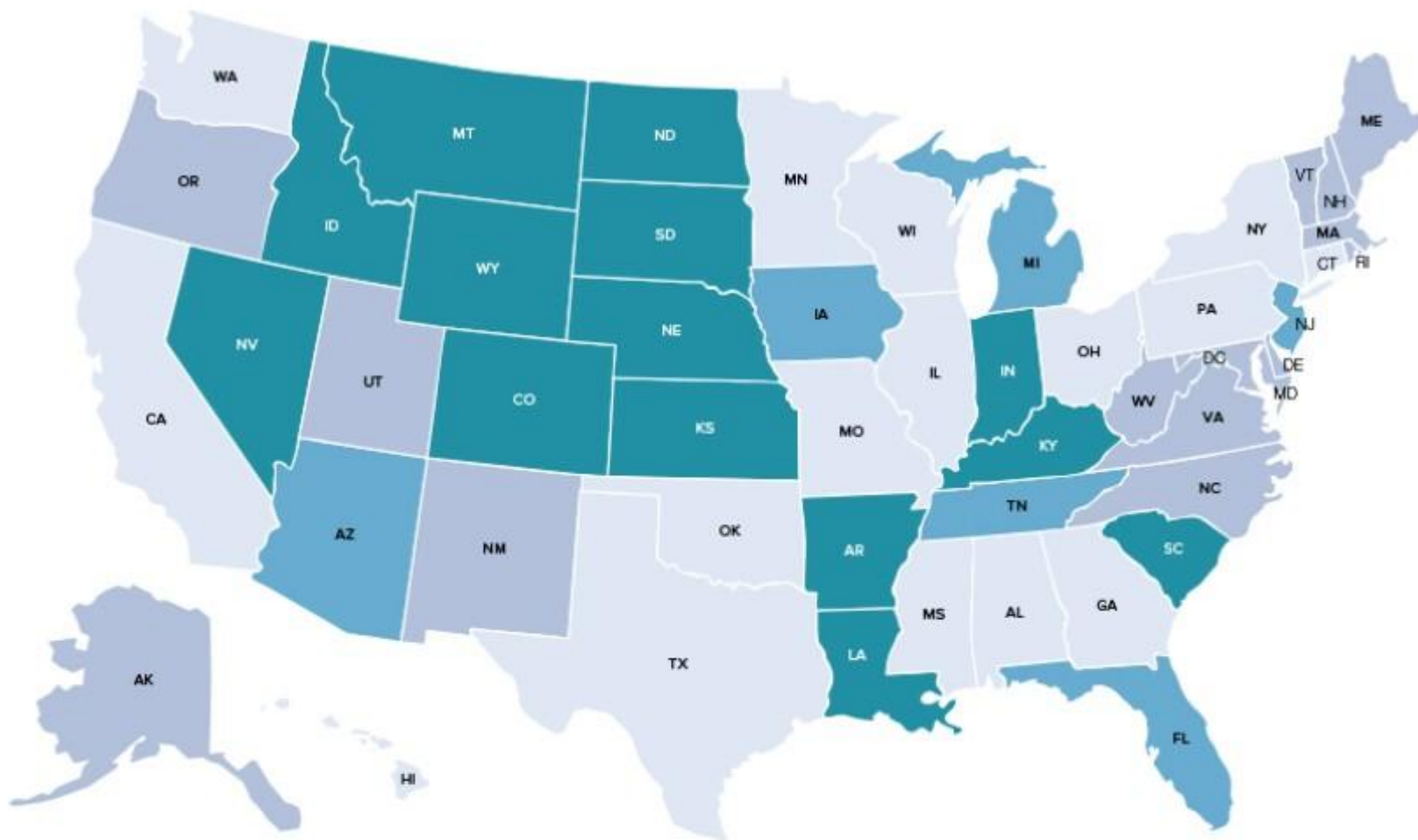
- **Forensic pathologists are medical doctors who have specialized training in performing autopsies and determining the cause and manner of death**
- According to the National Association of Medical Examiners, the United States has **~500-750** full time, practicing, board certified forensic pathologists
- Experts say that the country needs **~1000-1500** in order to meet increasing demands
 - COVID related deaths, opioid epidemic, increasing gun violence, etc.

Coroners

- **Coroners**
 - Elected officials who are not required to have medical training
 - Help to fill in the gaps created by shortage of forensic pathologists
 - Not an ideal system

Medical Examiners

- **Medical Examiner**
 - Varying definitions depending on where you are in the country
 - Lay medical examiners
 - Physicians
 - Forensic pathologists



A PATCHWORK SYSTEM

America's system for investigating deaths is a mix of different laws, procedures and job descriptions.

- County-based mixture of medical examiner and coroner offices
- Centralized state medical examiner office
- County/District-based medical examiner offices
- County/District-based coroner offices

What happens after someone dies?

- Death reported to the coroner/medical examiner
- Determination of jurisdiction
 - Next of kin can request to pay for a **private autopsy** if jurisdiction is declined
- Attend, document, and investigate the scene
- Determination if autopsy is necessary
 - If so, body transported to the morgue
- Postmortem examination performed
 - Determine extent of postmortem examination

What takes place during an autopsy?

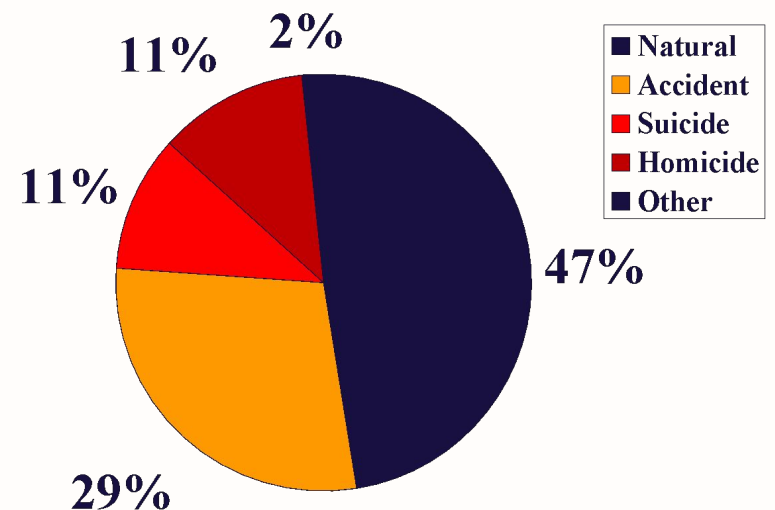
- On average, a full and uncomplicated autopsy takes ~1-2 hours
- Imaging can be performed (x-rays, CT scan) as an alternative/supplement to a more invasive postmortem examination
 - Routine for GSW, sharp force injuries, infants
- Attendees: law enforcement, district attorneys, coroners/medical examiners, students/trainees, and autopsy technicians
- Toxicology specimens collected

What takes place after an autopsy?

- Body released to funeral home
- Pieces of examined organs/tissues are looked at under a microscope
- Tissue saved in formalin to prevent future exhumation or in the event of cremation
- Determination of cause and manner of death for death certification
- Final autopsy report released
- Subsequent interactions with family/legal system

What is involved with Death Certification?

- Cause of death: disease or injury that lead to death
 - Based on autopsy findings
- Manner of death: circumstances by which the death occurred (based on scene investigation)
 - Suicide
 - Homicide
 - Accident
 - Undetermined
 - Natural



Special considerations

- Family input
- Religious requests for expedited postmortem examinations
- Request that religious representative is present during the postmortem examination
- Minimize the amount of samples/tissues that are collected and saved
- Rabbinical/in situ autopsy
- Return unused toxicology specimens/saved tissue to the body

Misconceptions about Autopsy

- We always determined cause and manner of death
 - 2-5% of autopsies are undetermined
- Most deaths require an autopsy
 - Worldwide, performed in less than 5% of deaths
- An autopsy prohibits an open casket
- Autopsies are obsolete
- Religion forbids autopsy
 - No major world religion outright bans autopsy
- TV shows accurately depict autopsies

Misconceptions about Autopsy

- Time of death can be precisely determined at autopsy
- Only homicide victims need an autopsy
- Cause and manner of death are the only results
- Any physician is qualified to perform an autopsy
- An autopsy must occur immediately after death
- The poison is always detected by toxicology
- All medicolegal death investigation is prosecution oriented

Questions from Participants?

Action Issues:

- Injunctions
- IGA or MOU
- Legislation
- Inter-jurisdictional/ Multi-disciplinary Training
- Fatality Review Teams
- Tribes or Family can contract with their own forensic pathologist & private pay for autopsy
- Victim Compensation Fund
- Medicine People can be in attendance to mitigate harm.
- Cultural competency training for ME/C