



### **F21 Dealing With Len Bias Laws and *Burrage v. United States*: Best Practices to Avoid Potential Pitfalls for Attorneys and Medical Examiners**

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After attending this presentation, attendees will understand the medicolegal aspects of the current heroin epidemic and the potential pitfalls in the successful courtroom presentation of drug-related deaths.

This presentation will impact the forensic science community by illustrating the need for pre-trial coordination between attorneys, law enforcement, first responders, and forensic experts in the successful adjudication of drug-related deaths.

The opiate crisis in the United States fueled an expansion of numerous drug delivery case prosecutions known as “Len Bias” cases. Len Bias, a stellar University of Maryland basketball player, died in 1986 allegedly of cocaine toxicity two days after becoming the number-two draft pick of the Boston Celtics. Bias’s death was the tipping point for instituting the 1986 Anti-Drug Abuse Act by Speaker of the House Tip O’Neil, a Boston native. This legislation increased incarcerations as a result of mandatory 20-year federal prison sentences for drug possession and delivery. Not until recently, on May 19, 2016, did Maryland eliminate its mandatory drug sentences; however, such laws still exist in other state and federal jurisdictions.

An increasing number of states have recently criminalized drug delivery causing death, charging homicide. While some jurisdictions charge heavily, others, such as Wayne County (Detroit), rarely invoke these charges, claiming that “police have not brought us any cases where we have been able to charge.”<sup>1</sup> Successful prosecution of drug-related deaths requires coordination between attorneys, law enforcement, and first responders.

Recently, the United States Supreme Court recently in *Burrage v United States* 571 U.S. \_\_\_ (2014) unanimously reversed and remanded a 20-year mandatory minimum sentence of an alleged heroin dealer and held “at least where use of a drug distributed by the defendant is not an independently sufficient cause of the victim’s death or serious bodily injury,” a defendant cannot be liable under the penalty enhancement provision of the Federal Controlled Substances Act, unless such use is a “but-for” cause of the death or injury.<sup>2</sup> The United States Supreme Court rejected the government’s “contributing cause” test. Their rationale will be discussed in detail in this presentation.

The metabolism and toxicity of heroin, a synthetic narcotic of morphine that is rapidly metabolized and rarely detected in the body, will be discussed. Heroin is first metabolized to 6-Monoacetylmorphine (6-MAM) and later to morphine. Presence of 6-MAM is diagnostic of heroin use. Codeine is frequently a contaminant of the manufacturing process and is commonly detected in heroin users. Some toxicologist/pathologists use a morphine/codeine ratio of greater than ten to be indicative of heroin use.

Although the legal requirement for causality requires an application of a “but for” standard, medical literature reports between 25% to 40% of postmortem examinations reveal a major pathological finding not identified prior to death. Decedents may have co-morbidities, such as victims having severe coronary artery disease as well as the use of cocaine, raising questions of potential competing causes of death.



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Many medical examiners may forego autopsy examinations, electing to rely solely on the detection of drugs in the body. Drug concentrations alone are not a reliable cause and manner of death. Patients could develop a tolerance to medications (opiate). Few definitive lethal levels of drugs, such as cocaine and opiate tolerance, exist.

Medical examiners must work under increasing economic and logistical pressures to make diagnoses in the most cost-effective and efficient manner, often resulting in a rationalization of these deaths without actually demonstrating the drugs involved, which may influence the ability to proceed. For example, Washtenaw County, Ann Arbor, MI (pop. 350,000) typically records 40 to 50 heroin deaths per year, of which 15.9% to 22.5% of cases are negative for 6-MAM in the blood and urine, detected only upon further testing of vitreous fluid.

Victims may be under the influence of multiple drugs identified in the body. The bodies of victims of drug toxicity will usually contain multiple drugs from various providers. Half of heroin deaths solely contain heroin, while the remaining cases contain a mixture with other potentially fatal drugs.

Physiological factors inherent to the victim, such as postmortem drug redistribution and pharmacogenomics, may influence postmortem concentrations of these drugs, making medical examiners' interpretations relatively impossible to determine.

The American College of Medical Toxicology and the National Association of Medical Examiners convened an expert panel of pathologists and toxicologists to determine best practices in these cases.<sup>3</sup> Their findings included obtaining complete autopsies with toxicology results as well as considering the context of circumstances surrounding death, medical history, and scene findings; completing scene investigations and obtaining prescription information and pill counts; retaining blood, urine, and vitreous humor; conducting toxicological panels for opioid and benzodiazepine analyses, as well as other potent depressant, stimulant, and anti-depressant medications; interpreting postmortem opioid concentrations in correlation with medical history, scene investigation, and autopsy findings; and other best practices, which will be discussed.

### Reference(s):

1. Eric Litke. More States Push Homicide Charges in Heroin Overdoses. *USA Today* 25 July 2014.
2. *Burrage v. United States*, 571 U.S. \_\_\_\_ (2014).
3. Gregory Davis and the National Association of Medical Examiners and American College of Medical Toxicology Expert Panel on Evaluating and Reporting Opioid Deaths. Recommendations for the Investigation, Diagnosis, and Certification of Deaths Related to Opioid Drugs. *Acad Forensic Pathol.* 3,1 (2013): 62-76.

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### Drug-Delivery Deaths, Heroin Deaths, Len Bias Law