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## Old cases test evidence, faded memories

Assault charge goes back two decades

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As John Little, 63, was nearing parole last year for murdering his wife, he was charged anew with sexually assaulting their daughter almost 25 years earlier. Sexual assault cases are hard enough with their limited physical evidence, but put two decades between the alleged assault and an investigation and they get tougher.

"You are much more likely to be able to piece together what you were doing last week or last month than what you were doing 20 years ago," said Little's lawyer, Jonathan Cohen of Concord. "And if somebody is making allegations, you'll have a much better ability to meet the allegations if you can remember who you were with and what you were doing during the allegations."

The law requires the authorities to bring charges fairly quickly for most crimes unless the suspect has fled the state, but it gives prosecutors decades to file charges in two of the biggest offenses: murder and child sexual assault. (Victims of child sexual assault can bring charges until they are 40, and there is no time limit in murder cases.) Delays can certainly put a case at a disadvantage for both sides if witnesses can't recall an event or evidence is lost or damaged.

But local prosecutors and defense attorneys said time can also bring advantages.

Advances in DNA technology allowed the Concord police to arrest 81-year-old Yvonne Fine's killer in 2000, 19 years after her murder. Joseph Whitley had been questioned shortly after Fine's body was found, but it was almost two decades before new technology allowed them to match Whitley's DNA to semen stains found on Fine's pajamas.

And defense attorney Jim Moir of Concord has found advantages in what Cohen sees as hurdles in the Little case.

"I think the age of a case cuts both ways," said Moir, who is also handling a sexual assault case that goes back many years.

"Witnesses can die. They can disappear. And you certainly can have questions about memories. But that can often help a defendant."

Cohen declined to share his defense strategy for Little of Nashua, who went to prison in 1982 after pleading guilty to stabbing his wife, Deborah Little, to death. For his plea to second-degree murder, Little received 36 years to life in prison. Under an old system that allowed prisoners to accumulate time off for good behavior, Little became eligible for parole in 2004, the same year prosecutors charged him with sexually assaulting his daughter.

The authorities, however, had learned of the alleged sexual assaults about eight years earlier -in 1996. The alleged victim came forward then as her father was asking a judge to reduce his sentence for killing her mother.

Marguerite Wageling, the Hillsborough County attorney, declined to explain why the authorities did not charge Little immediately after he was accused because the case is pending. "Our office does everything it can to move cases along as efficiently as possible," she said. "It's more fair for everybody, not only the defendant but the victim and society at large."

Little could agree to a plea deal. Or he could deny the charges, go to trial and see what jurors make of the accuser's timing, his murder conviction and each side's credibility. With little or no physical evidence, sexual assault cases, especially delayed ones like this, come down to he-said, she-said.

Cohen could also ask a judge to dismiss the case on the grounds that too much time has passed for Little to mount a defense. To win that request, Cohen would have to show the state purposely delayed bringing charges to harm Little.

Cohen has succeeded there before, in a delayed Rockingham County drug case. An important witness with crucial testimony in the case had disappeared while the case lingered, and because of that a judge dismissed the charges, Cohen said.

That's not a guaranteed win, though. The state Supreme Court recently rejected that argument in two old cases that were recently

charged, a 1983 murder of a Concord baby and a child sexual assault case against a former Dartmouth College student that goes back to 1967.

In the murder case, the police suspected the baby's mother and boyfriend from the start but said they didn't have enough evidence to bring charges until 2002, when they arrested the boyfriend. In the child sexual assault case, in which a boy accused his tutor, the alleged victim told his parents in 1967, but they didn't believe him and didn't report it. The alleged victim went to the authorities himself in 2002, after reading about the clergy abuse scandal.

Neither case has been tried yet.

Getting those cases to trial was a win for prosecutors, but the passage of time can hurt prosecutors as well as defense lawyers, said Jeff Strelzin, chief of the homicide unit for the attorney general's office. Prosecution witnesses, including former detectives, can die, disappear and forget, too.

Also, the file on an old case could be sparse. Strelzin said he has noticed much less evidence and material in older cases, something that can make prosecuting the case harder. He suspects old cases were less coordinated because each person working a case - the prosecutor, police officer and investigator - kept their own files. Now Strelzin's office keeps two complete files on criminal cases, one at the attorney general's office and one with the local police agency.

And some information in an old file may no longer be admissible at trial, Strelzin said. Until recently, the police were allowed to tape only parts of a suspect's statement, confessions included. The law now requires the police to tape the entire statement if they want to play any of it for the jury. If prosecutors have a taped confession from 20 years ago, the jury won't hear it unless the police taped everything the suspect said.

Evidence in an old case, when it exists, can also make or break a case.

It made the difference in the Fine investigation. Tim Pifer, head of the state police's crime lab that analyzes and stores evidence, said his crew routinely checks old evidence using new methods and technology in hopes of finding new leads. Today he can pull cigarette butts collected at a crime scene 10 years ago and pull DNA off the filters to tie the cigarette butt to an individual suspect.

Similarly, advances in fingerprint analysis means Pifer can read a print off a piece of glass that he couldn't have read 20 years ago.

But to be useful, evidence needs to not only be kept but kept securely enough to convince a jury it is as pure as the day it was collected. That means the 20-year-old piece of glass with fingerprints needs to be unsmudged today. Any prosecutor who introduces evidence at a trial spends a fair amount of time asking the lab expert how it was stored because the defense is sure to question the evidence's integrity.

Diane Nicolosi, a Concord defense attorney who helped defend Whittey, urged jurors to discount even the DNA evidence, typically strong evidence, because while it could put Whittey at the scene, it didn't prove he strangled her.

That was one of several efforts by the defense team to acquit Whittey. Nicolosi and her trial partner, Cathy Green, also raised the delay between Fine's murder and Whittey's arrest. The defense tried to remove the judge from the case because she had worked at the attorney general's office 20 years earlier and had taken a call about the investigation.

The judge stayed on the case, and the jury convicted Whittey.

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