

Spot the difference. Comparing current and historic Homicide Investigation in the UK.

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Abstract

Homicide investigations attract the highest levels of expectation as investigative failure has a significant and lasting impact upon victim families, investigators and wider society. By focusing upon 'current' homicides, present UK Investigative resourcing and methodology arguably is in danger of failing to recognize both the risks and potential presented by unresolved (cold) 'historic' homicides. This paper argues that significant differences exist between these two types of homicide investigation, and that the embracing of these differences, promises much to the improvement for both types of homicide investigation.

Introduction

'No greater honour will ever be bestowed on an officer or a more profound duty imposed on him than when he is entrusted with the investigation of the death of a human being.'

Baca (2001: p.1)

When viewed as a business process, homicide is arguably the most impactful investigative process of all. Investigative complexity, relatively high resourcing, and a convergent combination of disciplines, when mixed with organisational requirements (including efficiency, risk management, and reputation), contrive to demand the highest levels of individual and organisational skill from those charged with doing the investigating. As Innes (2003) notes ¹, 'investigators; relatives; witnesses; society in general – all invest the highest levels of expectation, trust and confidence in the investigation of Homicide'. It follows that

¹ Innes, M.R. (2003). Investigating Murder – Detective Work and the Police Response to Criminal Homicide.

the success or failure of homicide investigations, both individually and as a group, can have significant impact on all concerned.

Over the past two decades, cumulative learning from studies of investigative success and failure has become incorporated into established structure and standards for the investigation of homicide in the UK². Within law enforcement, interconnected guidance on roles, responsibilities, good practice and process has been established alongside a managed structure for implementation and delivery through the introduction of national accreditation processes seeking to deliver and maintain skill through a combination of training and experience. A further quality-assurance ‘backstop’ to this business model has been the development and formalisation of standardised ‘peer review’ processes to quality check and assure enquiries meet standards and objectives, and maximise opportunities to achieve ‘success’ against set business goals.

While, however, a range of previous studies have demonstrated that these processes work reasonably well to ensure that *current* (or live) homicide enquiries are appropriately resourced, conducted and quality-assured against set standards, there has been research exploring whether these are applied to the same extent to the investigation of *historic* or ‘cold case’ homicides. If not, then the logical assumption is that all forms of homicide investigation are considered to be fundamentally the same, with the only difference being one of time frame.

The purpose of this paper is simply to raise the question of whether current ‘live’ and historical ‘cold case’ investigations are sufficiently different in both process, thinking, and practice to warrant employing

² UK standards for the investigation of Homicide are principally contained within the Association of Chief Police Officers Core Investigative Doctrine (2005), Murder Investigation Manual (2006), Major Incident Room Standardised Administrative Procedures (2006), and the National Registration Process and Continuing Professional Development Framework for Senior Investigating Officers. (National Policing Improvement Agency, 2008)

different investigative approaches to each and if so to how and to what degree? Or to put it another way, is the current 'one-size fits all' approach fit for both live and cold homicide investigations?

Investigating homicide

Relative to other crime types, UK homicide investigations routinely enjoy significantly higher rates of detection³. This could be taken to infer that homicide investigators are more effective at what they do in comparison to those investigating other types of crime, such as burglary. Whether or not this is correct, what is unequivocally accepted is that homicide investigations are relatively better resourced, can often be 'easier' to understand in terms of key features, (e.g. victim; offender; motive/causation; scene; witnesses)⁴, and always receive comparatively greater attention and support from the general public, which itself can provide positive investigative support (e.g. through media attention, community awareness, and ultimately witnesses and evidence). Such apparent investigative advantage might also make homicide investigation relatively 'easier' to conduct successfully than other types of crime, in so far as the boundaries of the enquiry, including the mental boundaries of decision making for the SIO, are generally more clearly known and identified, both in reality, and in UK practice guides.

With advantage though comes expectation, as homicide investigations attract a significantly higher level of expectation of success from all. With for example, victim's families, senior police managers, politicians, policy makers, the criminal justice system and general public alike, all keen to see investigators achieve a successful outcome, with public safety, fear of crime, and confidence in the police inextricably linked with the successful resolve (real or perceived) of homicides (Innes, 3003). Indeed,

³ Home Office Sanctioned Detections:
2009/10 All Crime 28% : Homicide 86%
2010/11 All Crime 28% : Homicide 83% (*Home Office Statistical Bulletin 11, 2011*)

⁴ 'Domestic and confrontation Homicides account for over half of all Homicide Cases';
'Within the category of domestic Homicide, killing by a spouse is by far the largest group'
(*ACPO Murder Investigation Manual, 2006*)

even amongst homicide investigators the common 'default' position is an expectation that their enquiries will be 'successful' (in detection terms at least). The great weight of expectation thus hangs like the sword of Damocles above the heads of most homicide investigators, and most would acknowledge the pressure to 'succeed' on homicide investigators, moreover to 'get it right' on initial investigation, can be immense, both during the investigation, and in the case of 'unsuccessful' investigations, forever afterwards.⁵ The predicament of the investigator was eloquently summed up by Sara Payne (2006) the mother of the schoolgirl Sarah Payne who was brutally murdered by convicted pedophile, Roy Whiting, in 2000. *"If you put a step wrong in one of these big cases, you will be guilty for hell freezing over"*

Tales of the undetected

A national survey of UK police forces in 2009, identified the following

- That there were **1143** undetected homicides in the UK
 - That 42 police forces had reported having undetected homicides more than one year old
- There was significant variability between forces in the age and extent of case recording –(e.g. the oldest reported case was in 1866).
- In 2009, out of 651 reported homicides, the detection rate was **92%** equating to **52** undetected homicides reported in 2009.

National records for recorded crime show that this 'snapshot' is broadly representative of UK homicide over the past 20 years and that broadly speaking, although detection rates for homicides are consistently high (despite the fact that overall UK recorded homicide numbers have been on the decline in recent years) the total number of undetected homicides remains both significant and rising. Irrespective of the positive advances in investigative methodology, law, and forensic science. All things being equal, it is likely then that the overall number of undetected historic homicides will continue to grow.

⁵ see Rossmo (2006; 2009) for a good account of 'criminal investigative failure' .

Several other factors may conspire to further complicate the issue, such as common organizational changes currently taking place across UK policing which seek to reduce and/or redirect specialist resources (including cold case review teams) toward a wider range of other competing policing priorities (e.g. child sexual exploitation and cyber facilitated crime) . The knock on effect has given rise commonly to an unfortunate operational reality that pursuing historic ‘unresolved’ cases is the poor cousin of reactive enquiries into current homicides; both in terms of resourcing and senior management focus. Although such a shift is completely understandable, nevertheless we believe that it is regrettable for three main reasons.

1. An unwelcome by-product of this resourcing change process is a higher turnover rate in personnel, resulting inevitably in the loss of some of the most skilled and experienced investigators. In particular their knowledge of ‘legacy’ systems and those processes crucial to the review and re-investigation of historic cases.
2. The closing of the Forensic Science Service, has caused instability in the forensic provision for UK forces. The movement from a national service to a combination of multiple private and police-managed services ⁶, arguably threatens the ‘organizational memory’ of scientists and police in terms of retention of unresolved casework, not just of appropriately retained records and material, but also of the specialist skillsets and knowledge required of the forensic providers themselves.
3. An increase in public access to detailed and often open-source case information, such as more public and open ‘non-Police’ reviews of cases and police investigations, greater awareness and comprehension of investigative methodology, (particularly in terms of the

⁶ Within the UK, the former (national) Forensic Science Service was finally dissolved in 2012, to be replaced by a range of local public/private sector Forensic providers.

opportunity it may offer to ‘revisit’ historic investigations) has led to a growing public readiness to challenge and criticize both investigators and their investigations.

These and allied factors arguably can (and do) combine to drive a trend towards greater scrutiny of the issue of historic and ‘unresolved’ cases, ironically at the very time when the attention given and resourcing of these cases is most under threat. Left unrecognized and unaddressed, situational will represent a real (and increasing) threat both to organizational resources (e.g. cold case teams and forensic science provision) to individual and force reputations, and most importantly, to justice.

In response to the challenges which such changes in resourcing present, rather than commit specialist investigative resources specifically to ‘historic’ enquiries, police forces do have options available to them. Firstly, agencies might take the decision to reduce these resources, even to cease the routine review or processing of historic enquiries; arguably that could represent an abrogation of organizational responsibility, and a massive risk to organizational reputation. Secondly, they may retain but reallocate this task to others, often those routinely responsible for investigating current enquiries. Quite apart from overall workload issues, that option also returns us to the question of whether there is a significant differences between the investigative needs and demands of ‘current’ and ‘historic’ cases. If there are, as we have endeavoured to show here, then it follows naturally that additional guidance will be needed to help investigators to bridge the gap between the two types of homicide investigation as is common for other types of investigation, such as for rape or fraud.. UK best practice guidance although of undoubted utility to live ‘current’ homicide investigators and their investigations is significantly less so for those investigating cases of a more ‘cold’ and ‘historic’ type, and is a point we will return to in due course.

The methodological differences between ‘historic’ and ‘current’ homicide investigations

Although it carries the same expectations of any homicide enquiry, the investigation of historic homicide is constrained in different ways in addition to those encountered in current (live) investigations. Not just as a result of the passing of time, but also by the actions of previous investigators. Arguably, historic investigations can also suffer from the different expectations of stakeholders that might arise as a consequence of their experience of the success or failure of previous investigations. For many, for example, the mere mention by the media that a famous case is being re-visited is enough for them to believe that police have new evidence or a new lead and that a breakthrough is imminent. This of course is far from always being the case and, as noted earlier, 'unresolved' cases represent an ongoing, significant and even increasing risk to reputation.

If historic and current homicide investigations are compared, then a range of key investigative differences are identified in two main areas, both of which can be significant in the 're-investigation' of historic homicides.

- The processes governing the gathering, retention and 'preservation' of investigative material
- The generic investigative process and decision-making

The differences in initial approaches to any investigation may well impact on subsequent enquiries. The setting of investigative parameters; nominal categorization; the recovery and retention of forensic or other evidential material; lines of enquiry; -, historic perspectives, context, and decisions, will always affect the opportunities for subsequent future enquiries. Few original investigators of what were to become 'unresolved' historic homicides, would be criticized for failing to have considered at the time the investigative (including scientific) advances that might or might not come along in the future. Taking forensic science as just one example here, who investigating a homicide in 1975 could have foretold the invention of current DNA evidence? That said, hindsight has repeatedly shown us just how significant the proper retention of original material can be to offering new opportunities to revisit and resolve historic cases in the light of new science, or new information. In the case of the rape and murder of school girl

Lesley Moleseed in 1975, although the original investigation cannot be considered a shining beacon of investigative practice, those involved had the foresight to retain and preserve the victim's underwear from which the DNA evidence, so crucial in identifying and convicting her killer in 2006, was extracted.

One feature worthy of additional note which can often influence initial homicide investigations is the focus upon the *immediacy* of the investigative process. The thought process of the Senior Investigating Officer (SIO) and the investigators is quite rightly in the context of the initial investigation of a Homicide, towards *current* priorities, in other words the priorities as they appear at that time, and prioritising available resources towards those tasks. As such, this can create a tension in decision-making; the SIO has to quickly address the task of assigning parameters to the *immediate* investigation; geography; time; forensics; witnesses; suspects; which - by their very nature are artificial, subjective boundaries, inside which data will be collected, and outside which data will not. In effect this is a deliberate sampling of some, rather than all of the potential data.

Secondly, by their very nature all homicide investigations are 'reactive', -responding to a past event, -and are therefore largely focused upon past events, rather than towards future events, one such being the unwelcome possibility that the investigation currently ongoing may fail.

Logically, 'current' investigations must always suffer to some extent in their ability to 'future-proof' the result of their enquiries in a way which provides the maximum opportunity for subsequent enquiries to succeed. Forensic and other scientific advances; processes for retaining evidential material; the impact of time on witness evidence; -experience shows that these and other factors all represent issues that would be likely to affect the effectiveness of any subsequent enquiry. That being the case, arguably a key component of any initial or 'current' enquiry ought to be consideration of, and planning for, the possibility that the enquiry may not be fully successful, and therefore contingencies should be put in place

to support the potential need for subsequent enquiries or reviews. This is an issue to be addressed not just through investigative training, but also through investigative roles, and investigative processes.

Is the ‘omnicompetent’ homicide investigator an outdated view?

The concept of the ‘detective’ as a specific role requiring specialist resourcing and skill has evolved over time within a wider Policing model, itself an evolving function of society both in the UK and globally, such that over time, specific role, recruitment, and skillsets have evolved to become hallmarks of the ‘professional Detective’. Within the UK, with regard to the obligations of homicide investigation under Article 132 of the European Convention on Human Rights, Crown Prosecution Service (CPS) advice is that, ‘investigators are trained, experienced, and supervised, records are kept, and that enquiries are reviewed’, (ACPO, 2006, p76). Arising from national research to identify common skill-sets for effective SIO’s (Smith & Flanagan, 2000), definitive national guidance on the key principals of criminal and homicide investigation is currently enshrined in three key documents published by the Association of Chief Police Officers (ACPO)⁷. These detail the administration, staffing and roles for Major Incident Rooms utilising the Home Office Large Major Enquiry System (HOLMES), linking ‘investigative success’ to ‘an organised and methodical approach’ (2005: p.15), set out key principals for the criminal investigator⁸, aspiring to, ‘...enable investigators to make logical, structured and accountable decisions’ (2005: p.16), and detail the methodology and process of Homicide Investigation⁹, emphasising the role of Senior Investigating Officer (SIO) as that of ‘lead investigator’, requiring them to be, ‘skilled and experienced investigators who are able to develop investigative strategies based on the unique circumstances of each case’, able to, ‘continually modify them as new material becomes available’ (2006: p.26).

⁷ ACPO Guidance on Major Incident Room Standardised Administrative Procedures (2006), UK Home Office.

⁸ ACPO Core Investigative Doctrine (2005), UK Home Office.

⁹ ACPO Murder Investigation Manual (2006), UK Home Office.

They also define a national registration and continuing professional development scheme ¹⁰ as the mechanism by which investigators and SIO's should manage and evidence their acquisition and maintenance of investigative skills, noting that, 'Experience alone is no longer sufficient preparation for leading a Homicide Investigation. SIO's must understand the wider principals of criminal investigation and related disciplines such as forensic science, crime scene examination, and the behavioral sciences. This will increase their skills and knowledge and improve their approach to all investigations' (2006: p.27)

They also emphasize the importance of an independent review process as a mechanism to constructively evaluate the conduct of an investigation. Significantly, this process recommends reviews of detected *and* undetected crimes, noting that, 'Every review should be seen as an opportunity to improve future working practices by identifying lessons learned and good practice. These lessons can be found in detected and undetected cases'. (2006: p.84).

However, with specific regard to the investigation of historic, 'unresolved' cases, these same sources offer notably little guidance. Of the key references identified above, arguably only the ACPO Murder Investigation Manual in its current version¹¹ offers guidance on 'unsuccessful' investigations; in a document consisting of no less than 305 pages, this guidance is limited to a single box on a single process chart, entitled, 'Model of Idealised Investigative Decision-Making Process', where it offers the guidance, 'if no viable lines of enquiry are left, ...-enter Investigative Maintenance process'. To date, other than scant advice offered indirectly through guidance on the generic conduct of reviews, any clear guidance or reference that might assist an inv. Moreover, the chart itself is a reproduction from an earlier document actually authored in 1998.

Given the evolution and improvement of homicide investigative practice in the last 27 years, this raises

¹⁰ The National Registration Process and Continuing Professional Development Framework for Senior Investigating Officers. (2008) National Policing Improvement Agency, UK.

¹¹ ACPO Murder Investigation Manual (2006), UK Home Office, P.55.

the question as to whether or not this guidance really represents the current best practice in this area, and if it does, then set against the size and scope of the problem, is that really acceptable, either organizationally or as a profession? Put another way, it does appear still that, in the UK at least, the prevailing view is that all homicide investigations call on the same knowledge, skills and experience, irrespective of whether they are investigating current and 'live' or historic and 'cold' homicides. As 'omnicompetent' detectives, they can deal with both types of investigation equally. As we have endeavored to show, this view is one that requires challenging.

Whodunnit and the importance of investigative decision-making

Throughout current UK doctrine and beyond, a key element of the investigative 'skill-set' is effective decision-making. The ACPO Core Investigative Doctrine notes that, 'a core skill for any investigator is the ability to make decisions which can be justified to others. Decision-making is therefore central to any criminal investigation'. Significantly, however, it also observes that, 'Despite this, decision-making skills are not generally part of investigator training'. (2005: p.58). Perhaps unsurprisingly, UK Police doctrinal approaches to decision-making offer only limited guidance, promoting the concept of an 'investigative mindset' as, 'a state of mind or attitude which investigators adopt and which can be developed over time through continued use, applying a set of principles to the investigation process. (CID 2005: p.60). They also indicate good practice and potential pitfalls that occur in decision-making, notably the development and testing of hypotheses, and logical and subjective errors, however this is at best minimal. By contrast decision making research from non-policing arenas provides and useful guidance.

Heller (1998) usefully describes a decision as, 'a choice between a variety of alternatives. ...A decision can be made instantly, but more often involves the decision maker in a process of identification, analysis, assessment, choice and planning.' In terms of factors affecting decision-making *individuals*, Popper (1972; 1978) in his theories of cosmology and objective epistemology describes how different physical

and mental states can exist and interact to affect the perception -the 'model' - of physical reality created by the human mind. Stelfox (2009) and Rossmo (2008:2009) similarly offer useful insight into the impact of bias and subjectivity specifically upon investigators, whilst Dror et. al. (1999; 2006) identify such diverse factors as time pressure, and the context in which information is considered, as impacting upon decision-making. This contextual view is further developed by Kahneman and Tversky (2000) who present the concept of 'framing' - the consideration of information from a particular perspective rather than other potentially more useful perspectives.

Regarding factors affecting decision-making *processes*, Copi & Cohen provide useful guidance in the application and processes of logic, which they define as 'the study of the methods and principals used to distinguish correct reasoning from incorrect reasoning.' (1998: p.3). Fisher (2001) similarly presents critical thinking as a process and methodology to support effective decision-making. Heuer (1999) explores the psychology of intelligence analysis as a process, and offers a model for analysis of competing hypotheses as a useful mechanism to apply higher levels of critical thinking as a means to challenge and refine mental models and analyse complex problems. Atkin (1998: 1999: 2000) explores the practical application of scientific methods, logic, and reasoning to the analysis of crime-related data and problems. More recently, Duvenage (2009) reviews traditional analytic processes, and proposes structured cognitive models as a beneficial mechanism for knowledge management.

Whilst understanding 'decision-making' as a process may be desirable as a means to improve investigative skillsets, it also represents a reputational threat. The investigation of major crime such as murder is seen by the public as an index of police competence (Innes, 2003, p. 276). Flawed decision-making has been repeatedly identified as responsible for failed investigations and miscarriages of justice, for example, the Byford Report (1981), the Stephen Lawrence Inquiry Report (1999), and the Shipman Inquiry Report (2005). A study carried out in 1992 for the Royal Commission on Criminal Justice found

that the most common type of error in crime investigation was that of decision making (*Irvine and Dunningham, 1992:37*), a conclusion also supported by the Home Office *Paper 218, 2004, Reviewing Murder Investigations*.

Clearly, the decisions and actions taken in an initial investigation and any subsequent enquiries, must inevitably impact upon any re-investigation. As the ACPO CID notes, 'The first opportunity to examine a source of material and test its reliability may be the last, where there is an opportunity to gather material early in an investigation it must be taken. To pass up such opportunities may mean that they are lost forever', (2005: p.63).

The Review Process

A key component of quality-assurance for homicide (and similar) investigation is the review process, defined by Rogers as: 'A constructive evaluation of the conduct of an investigation to ensure an objective and thorough investigation has been conducted to national standards and which seeks to ensure investigative opportunities are not overlooked and that good practice is identified', (2005, p.3). However, despite much doctrinal emphasis on the importance of the review process, these same sources currently offer relatively little support or guidance or support in terms of methodology, and no specific guidance on the review of historic investigations.

Alongside 'decision-making', early progress assessments of homicide investigation reviews (Nicol et al, 2003/4) also identified forensic issues and record/information management as common investigative weaknesses. Additionally, as part of a Police Standards Unit evaluation of cold case reviews, Turner et al (2005) noted that, 'The evaluation of cold case reviews has highlighted serious shortcomings in the way the Police Service and other agencies in criminal justice system store and maintain original case papers

and exhibits. Widespread destruction and loss of these items has had a serious effect on progressing potentially solvable cases. Forces should review their storage and retention policies to deal with the need to retain documents and evidence for future advances in science and technology.’ (p.8). In the specific case of historic undetected homicide re-investigation, the review process forms an integral part of the precursory process to reinvestigation. A national assessment of ‘cold case’ undetected homicide reviews suggests that, ‘the objective of reviewing previously undetected homicide cases is to identify those that have the potential for re-investigation in order to catch the person responsible. This will not always be possible but the key message from the police to the families and the perpetrators must be “we still care” and “murder investigations are never closed” (Gaynor 2002: p. iv). This same study also noted that, ‘the key factor in triggering a re-investigation appears to be advances in forensic technology.’

Returning to the concept of ‘framing’, Roach and Pease (2009) examined the impact of framing upon both the investigative *and* the review process, observing that in contrast to undetected cases, since detected historic homicide cases are not routinely revisited by cold case review, the potential for different knowledge, including verification of success *or* identification of failure, was lost. As they comment, ‘The notion of cold case review has been framed in an inappropriately narrow way to exclude such cases’, (p.332).

In terms of advancement in forensic evidence , reviewing the impact of modern forensic DNA techniques upon police investigations of serious crime, in particular historic crime, Roach and Pease (2006), advise that these techniques should be viewed as an integral part of the overall investigative process, and as a mechanism for even-handed investigation, -a tool applied equally for prosecution and defence- rather than as a mechanism purely for identifying offenders, stating, ‘DNA science should be seen as a tool which enhances, not replaces, the skills of the detective’. (2006: p.6).

Gaynor's 2002 study also noted that, 'In addition to forensic advances, there have also been other scientific developments regarding investigative techniques and the availability of expert evidence. The management of witnesses and the media are key issues, together with how the family of the victim is involved in the re-investigation process. The storage and retrieval of exhibits and evidence are crucial factors in the whole process. There is a requirement to utilise a system for assessing the extent of any potential re-investigation prior to re-opening a case.' It also recommended several key components that should form part of reinvestigations of historic undetected homicide. Over a decade later, and despite widespread support, there is little evidence that these recommendations have been adopted across the bulk of UK homicide reviews or historic re-investigations.

Summary

In the present paper, we hope to have demonstrated that, within the UK at least, differences in methodological approaches to current and historic homicide investigations can be identified, and moreover that identifying and adopting methodology that properly recognizes and responds to these differences could of itself offer opportunities to reduce investigative failure, and increase investigative success. What is needed is further research that focuses on these important differences and what they mean for the homicide investigator. This research will present both a challenge and an opportunity, to stakeholders, to investigative professionals, and to the profession as a whole. Left unexplored, rather like a cancer, unresolved homicides represent a growing source of failure and missed opportunity and arguably betray exactly the high level of trust and expectation –that obligation and duty, -placed upon investigative professionals by Society.

By contrast, methodological changes driven by new and proper understanding of the differences between current and historic investigations offer the opportunity to systemically address the problem, first by

taking a fresh approach to historic cases but also, and perhaps more importantly, taking a more long-term approach to 'current' investigations whereby proper consideration and contingency planning is given to the possibility that initial investigations may not be immediately successful and so will require revisiting. But this is research for another day.

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