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The Adversary System: Role of the Forensic Pathologist

Since antiquity dead human bodies have been subject to examination under exceptional conditions. Thus, we note that the body of Julius Caesar, murdered in 44 B.C., was examined by the physician Antistius. A stab wound had penetrated his thoracic cavity whereas the remaining twenty-two wounds were designated as nonfatal in type [1]. Throughout world history, works have been written which touch upon various facets of legal medicine including those pertaining to pathology. Evolution of legal pathology has been constant but occurring in fits and spurts. In Great Britain [2] and in the United States changes are constantly being sought to improve medico-legal death investigations. Today, it seems evident that the complexities of such investigations require that forensic pathology be maintained as an independent entity. All previous and current systems have had one common theme, the investigation of apparent criminally caused deaths. Yet today we see that the forensic pathologist should be concerned with death investigations that relate to a broader theme, the public interest. In Florida, such deaths are defined as follows [3]:

- (1) When any person dies in the state
 - (a) Of criminal violence;
 - (b) By accident;
 - (c) By suicide;
 - (d) Suddenly, when in apparent good health;
 - (e) Unattended by a practicing physician or other recognized practitioner;
 - (f) In any prison or penal institution;
 - (g) In police custody;
 - (h) In any suspicious or unusual circumstance;
 - (i) By criminal abortion;
 - (j) By poison;
 - (k) By disease constituting a threat to public health; or
 - (l) By disease, injury, or toxic agent resulting from employment; or
- (2) (a) When a dead body is brought into the state without proper medical certification; or
 - (b) When a body is to be cremated, dissected, or buried at sea.

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These deaths have some degree of potential public interest and indicate the effect of social and health problems. Although less than ten percent of the above types of death may be the result of criminal causation, all should be of public concern. The pathologist, involved with such cases, is in a position to appreciate the problems of society and thus becomes the community pathologist.

The initial investigation of a forensic pathologist must, of necessity, be case-oriented. Each death must be approached with two thoughts in mind, correlation of facts and anticipation of future inquiry. The first step of an investigation is to ascertain all possible information about the circumstances and previous medical history. Without such knowledge, the post mortem dissection becomes a technician's exercise leading only to documentation of the most obvious changes and misinterpretation of the less than obvious.

Without a doubt the most ideal pathology investigation starts with the personal inspection of the scene of death by the pathologist [4]. Not all death scenes may be inspected by the pathologist prior to his examination of the body due to the press of time and the large volume of cases. Accordingly, police information should be derived in such a manner as to indicate the terminal event, past history, and facts pertaining to the condition and position of the body when found.

In most cases of simple trauma, the post mortem examination of the body shall serve to reinforce the initial police opinion. It is a mistake, however, to rely only on one or the other. Investigations may, of necessity, vary widely in quality and in the amount of available material. The pathologist must consider the adequacy of the background information which, in the light of subsequent investigation, might change. His post mortem examination, subsequent microscopic studies, and toxicological analyses must all be germane to the specific case. The time to correlate medical facts with historical circumstance is during the investigation and not after. As one carries out the investigation, the facts are likewise interpreted in the light of the fund of knowledge that has been derived from previous similar investigations. It is this knowledge that enables the pathologist, or experienced police investigator, to expect certain findings. Upon such expectation is based the search for individual facts [5]. For example, in southern Florida, a small Negro toddler who begins to cry, stagger, and is having seizures or is dead on arrival at the nearest hospital, should be considered a case of parathion poisoning until proven otherwise.

The anticipation of future inquiry should likewise influence the pathologist's investigation. If there is reason to believe that newspaper, family, insurance, police, or other inquiry sources might become involved, it is well to anticipate what questions could arise and search for answers while the case is current. A single factual observation at the autopsy table might be confusing in the future unless it were correlated with other facts at the time of the investigation. For example, in a case of suspicious death with much blood at the scene, it was apparent that the elderly victim had fallen, had struck his head on a soap dish, and had bled from a lacerated frontal branch of the superficial temporal artery, although the wound measured less than one centimeter in maximum dimension. It was anticipated that this wealthy business man might have an insurance policy subject to question. It was also anticipated that he could be expected to have organic heart disease in view of his age. The future question should be concerned with the role of heart disease in death causation. A photograph of blood droplets that spurted upon the bathroom wall from the lacerated artery clearly indicated the excellent functional status of the cardiovascular system after receipt of the injury. This photograph prevented unnecessary litigation although the autopsy revealed organic heart disease. Anticipatory data should always be sought and included in each case file.

To further fulfill his community role the forensic pathologist should have a system of coding whereby causative factors of disease and injury may be delineated and serve to alert the community and the legislature to need for change. Unfortunately there does not exist any complete syllabus pertaining to medical examiner coding. Such a work should at least include the codable causes of death by disease or injury, complete demographic information including occupational classifications, circumstantial events, and census tract data. The goal should be a system of coding which is compatible with data derived by other agencies. In this way the cases being investigated by the forensic pathologist might be best utilized for the common good.

What does this have to do with the adversary system? A twofold response is suggested. The first is the obvious fact that an adversary system may not be used as the sole source of facts when one is searching for solutions to social problems. The second is that documentation of data as noted above enables the pathologist to play a more helpful role when he becomes involved in litigation. In matters of pretrial discovery investigations, the forensic pathologist may offer the concerned attorneys reference to data sources which may speed the trial process and lead to early settlements. This is best accomplished through the use of informal meetings where one may speculate, discuss hypotheses, and help to clarify issues. At the time of deposition or during the trial phase, a pathologist may no longer speculate but must walk a much more narrow path. Hopefully the pathway has been clearly delineated by pretrial informal discussions. We frequently see that such is not the case. One gains the impression that many attorneys have not learned how to prepare for trial. It would appear that the majority of subpoenas received by this pathologist have not been associated with previous informal discussion. On occasion it has become necessary to notify the attorney that the facts which he hoped to derive from this witness were not present and must be sought elsewhere.

In matters of criminal law, the role of the forensic pathologist seems to vary depending on the nature of the case. The routine day to day homicide tends to require only a relatively small amount of basic preparation. The exception is the occasional case wherein public interest or some marked variation in method of injury merits considerable pretrial discussion. In general a case which is foreign to one's own jurisdiction likewise merits much more personal pretrial discussion due to the fact that one is working with strangers whose methods and approach may not be familiar to the pathologist, and vice versa.

The most serious problem of the forensic pathologist involved in the adversary system occurs when he becomes identified as an advocate. The heart and soul of the adversary system is the close identification of the lawyer with his client. Such should not be the relationship between the expert witness and a party at interest. A simple set of observed laboratory facts may be subject to interpretation by the forensic pathologist as positive, negative, or equivocal. The witness should be aware of all potential alternative interpretations and should express himself honestly and fairly in this regard. The addition or deletion of a single phrase from a hypothetical question may shift the interpretation from a possibility to a probability, a ploy which the court and the jury might not appreciate. The pathologist should beware of confusion. If the forensic pathologist has played a truly neutral role, and has been given the opportunity to discuss the case with both sides, errors of interpretation should be minimal. Before the trial the forensic pathologist should find out as much as possible about the case in order not to be forced into an uncomfortable situation on the witness stand. He should not be party to an injustice either willingly or unwillingly.

In summation the role of the forensic pathologist is that of the community pathologist. His individual case investigations, taken together, become the community studies upon

which educational, legislative, and research programs are based. His role in the adversary system should be only incidental to such a position.

References

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