

PLENARY SESSION: ETHICS AND THE FORENSIC SCIENCES

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Problems of Freedom and Responsibility in the Forensic Sciences

The past Presidential year has been both interesting and challenging. Yet, it has had its moments of tribulation, its hour of concern, and its day of dismay. It has brought insight into problems of momentous concern to the nation as a whole, to individual attitudes of Members and Fellows within the Academy, and to definitive needs for the re-examination of philosophies and purposes underlying the reason for the existence of the Academy.

As the result of the year which I have now concluded as President of the Academy, I have been privy to petty jealousies, irate complaints, faint praise, sincere congratulations, national interest in our organization, stature ploys, envy, adulation, and confrontations involving a choice of acquiescence or stalwart confrontation. The road has not been without its turmoil and conflicts, but it has been successfully traversed.

Television presentations, national magazine articles, scientific journals, network documentaries, and newspaper and radio references have frequently included the name of The American Academy of Forensic Sciences, the forensic "boys," "forensics," and other acknowledgments that our presence in society is now felt and that our role is becoming known within the households of America. This is a far cry from the road which was travelled by our organization a decade ago. There was a time when forensic sciences was equated with high school debating teams—but no longer! Today's more sophisticated society has approved the arrival of the forensic sciences upon the scene of civil and criminal justice and has come to expect that those of us engaged in these sciences and their respective applications within the courts of America will provide key answers to key questions having significant importance in a land of mistrust abounding from shore to shore, from prairies to mountains, from city to city within the United States. This mistrust is directed towards every federal government agency, every state law enforcement agency, and every local police department. It has resulted from continuous "disinformation,"² misinformation, and ad-man techniques born over three decades ago (during World War II) and has been perpetuated by the unholy alliance between various law enforcement agencies, La Cosa Nostra, and investigative agencies of government obfuscated under the guise of national security or other slogans of equally ill repute.

The American Academy of Forensic Sciences stood amidst this mistrust as an island in the sky—almost a mirage. Nevertheless, it was not—and is not—an untouchable institution. Nor are its Members or Fellows "egghead" thinkers only. They are also doers!

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²Presenting a position or information as complete while purposely withholding necessary information.

Many of our members have participated in courtroom presentations in both civil and criminal processes. Others have participated in reexaminations of matters of national concern, particularly in the matters involving both President John F. Kennedy and Senator Robert F. Kennedy. Adverse positions have not been uncommon—and properly so. Antithetical conclusions, indecisive findings, and opposing views have been expressed openly, candidly, and respectfully. This is as it should be provided such views, conclusions, and determinations have been based upon scientific development, as well as clinical determinations and interpretations, as opposed to subjective reactions or beliefs.

During this past year, I have had the privilege of reviewing testimony of document examiners and would-be document examiners more closely reflecting objectives of graphologists; of pathologists, both those who are certified as forensic pathologists and those who would have judges, jurors, and legal counselors believe them to be competent in forensic pathology; criminalists who have demonstrated their individual competency and those whose biases, prejudices, and subjective conclusions have reduced the discipline to an exceptionally low degree of art with but very little attendant science; and the activities of self-proclaimed advocates of the law holding themselves out to be competent trial lawyers while at the same time demonstrating their miserable mishandling of cases by improper utilization of the forensic sciences within the courtroom.

The unrest of the 1960s has given way to the mistrust of the 1970s! However, during the remainder of this decade, we, individually and collectively, are presented with a great challenge and coexistent responsibility. During this bicentennial year, 1976, a new birth can be initiated, provided we are ready to accept the challenge of truth—not truth as we want it, but rather truth as it is! We can provide a better place, a better country, a better society within which to provide a continuing, living heritage of freedom for the generations to follow us, provided we are ready to set aside political considerations, establishmentarianism, misplaced loyalties, amoral attitudes and sanctimonious (if not downright pompous) attitudes that would lead us to conclude that whatever we do as scientists or utilizers of the forensic sciences places us above reproof regardless of the outcome of our determinations or conclusions or the consequent results to a member of our society.

Freedom is not a word simply to be mouthed! It refers to the absence of necessity, coercion, or restraint in choice or action. Freedom is not liberty, for liberty implies the power to choose what one says or does as distinguished from lack of inhibition. Freedom is not license, for license implies liberty that consists of breaking laws or rules either by reason of abuse, illegal conduct, or through or by the exercise of special privilege.

Responsibility, on the other hand, refers to the quality of being morally, legally, or mentally accountable. It denotes a burden placed upon the actions taken for which the actor may be called upon to assume liability or to make answer for in case of fault or assumed obligations. It also connotes subjection to authority, the will of the formal organization, with retribution for unfulfilled obligations of trust subject to review, censure, or control.

It was with these thoughts in mind that I addressed my last two Presidential Messages in the *Newsletter*. It is also with these thoughts in mind that I present the challenge to each of us as Members and Fellows of the American Academy of Forensic Sciences in this bicentennial year of our great nation to further and implement particular goals, such as the following.

1. The establishment of a Standing Grievance Committee to which all complaints shall, mandatorily, be forwarded for predetermination of validity, appropriateness, and screening.
2. The establishment of a binding Code of Ethics to which all Members and Fellows would subscribe, thereby agreeing to be guided thereby and to be subject to disciplinary action for failure to adhere thereto in the future.

3. The establishment of a Standing Ethics Committee with power to hear and determine grievances referred to it through appropriately established channels.

4. The establishment of intradisciplinary nomenclature to be used whenever testimony is solicited or elicited, prior to or during trial proceedings and in written reports, oral communications, and depositions.

5. The establishment, wherever possible, of standards, modalities, and methods for each discipline—a project already begun, but which necessitates priority treatment and expeditious conclusions in the immediate future.

6. The establishment of certified disciplines, beyond those already existent, which will eventually include every recognized discipline within the Academy.

7. The establishment of ongoing educational programs, not only for the trainee-affiliates but also for those of us who have attained a status already recognized so that we may have continuing post-Member and post-Fellow educational programs to annually update and upgrade our knowledge or expertise.

8. The establishment of a Standing Legislative Committee which could service local, state, and federal legislative bodies or committees in an advisory capacity in any subject matter involving the application of the forensic sciences in both civil and criminal context. A greater spectrum of members could be utilized than is presently done based on present Academy position or office.

9. The establishment of a permanent Speaker's Bureau on a fee-for-service basis, part of the proceeds of which could be returned to the Academy coffer to assist in administrative costs.

These suggestions are only a small part of a greater spectrum of activity in which the Academy as an organization could become involved in the immediate future. No doubt there are many other (and probably more encompassing) ideas which others may have in mind. Some of these proposed activities may well be handled by our Foundation at a reasonably foreseeable time. However, until the Foundation has obtained a satisfactory monetary base from which to operate, many of these activities can, and should, be carried forth on a voluntary basis as we have done over the many years now gone past.

Certainly, by judicious and prompt implementation of the proposals here made, the elimination of false accusations, shoddy or erroneous practices, quackery, and improper assertions as well as erroneous information could be controlled if not completely eliminated in most instances. Individual attempts to thwart the progress of any committee, to undermine any program properly instituted, or to politically control or maneuver Academy activities would be scrutinized with a jaundiced eye because of the knowledge of the existence of a Standing Committee to which grievances could be submitted and another committee before whom valid complaints could be aired. Thus, both freedom and responsibility could be equally balanced and assured.

The day has arrived when the Academy can no longer hide its scientific light under a bushel basket. We have been and are now within the public domain. As time passes more and more of our members will be involved in matters of great public debate, controversy, and importance. We cannot remain isolated as a national organization while having our members intimately involved in scientific determinants and judicial utilization of our individual or collective expertise. Consequently, the American Academy of Forensic Sciences has present national obligations—and it will continue to exert an influence locally, statewide, and nationally in the future. As a result, we can no longer escape into scientific seclusion, but rather we must face our greatly increased role of responsibility in the advocacy of issues which have public overtones. Invidious, unusual, or paramount problems of public as well as private concern for the rights of individual members of society or society as whole have been placed upon our doorstep—and they will be placed there again.

Contrary to the expressions of some of our political figures, there is a vested right of society to know the truth, and a vested responsibility of the forensic scientist to speak the truth as well as a vested right of the forensic scientist to have the freedom to espouse the truth. Without truth, justice cannot prevail. Without truth only injustice can result. As Oliver Schroeder once wrote: "Law and medicine pursue the truth, they never capture it." So, too, the forensic scientist must pursue the truth and have the responsibility to inform and to warn the public of inappropriate application of forensic science in any given controversy.

The activities of the forensic sciences must be open to public scrutiny. Forensic scientists do not operate in social or scientific vacuums. The consequences of our determinations impact upon the whole of society. We cannot be ethically immune nor ethically neutral, for we dare not be value-free. From the conception of a scientific base of investigation and research to the final technological application of a scientific determination within the judicial processes, the whole of our activities is conditioned to consequences. These consequences may be good or bad, or an admixture, but they are certain to affect society as a whole.

All scientific findings should be open to public scrutiny and available for critical review, further analysis, and, whenever necessary, rejection. Freedom to perform forensic science critiques is essential to the progress of forensic science. Validation and invalidation of propounded assertions through peer review, adoption of standards, and proven modalities will lead to judicious acceptance. Any other method will stimulate the jaundiced eye of suspicion with the result of continuing legal skepticism predominating any scientific assertion. After all, whether we like it or not, the courts will ultimately decide what procedures, methods, standards, and modalities are to be accepted as fact rather than hypothesis. Nevertheless, the American Academy of Forensic Sciences can exert a great deal of influence upon these ultimate decisions—provided, of course, we accept the obvious challenge before us.

Lack of communication, or the lack of ability to communicate, scientific absolutes, improper utilization of the forensic sciences, unsuitable application of scientific technology, perjurious statements, unfounded preclusions, subjective determinations, misleading courtroom testimony, speculative assertions, and misleading use of scientific-sounding technical terminology would not appear to meet the criteria to determine professional responsibility. The lack of professional inter- and intra-policing of the charlatans has not aided the cause of professionalism, nor has the refusal to debate opposing views done anything to advance professional stature.

Political naivete is bane. Publicly stated forensic science opinions cannot continue to be ignored. Honesty demands that neutrality disappears—but not at the expense of objectivity.

Ethical principles cannot be ignored. Indeed, they must not be ignored! The misapplication of forensic science is a possibility and is part of the realities of human frailty. Indifference to these actualities can only result in immediate disrespect for the entire discipline and the forensic science organization that umbrellas that discipline. A wrongful act can be condoned by inactivity, silence, "stonewalling," or by ignoring professional ethics. Flagrant disregard for truth and justice can be noted by disinterest as well as by active participation in its propagation. Advocating the creation and implementation of mechanisms not yet organized should be considered necessary to the establishment of truth. They should be established for the purpose of causing a cessation of unethical behavior of any member of an organization.

A continuing self-examination to effectively eliminate errors or omissions, to search for truth, must be based on full and free disclosure. Secrecy, burying evidence, destroying evidentiary potentials, and covering the trail behind only lead to treacherous and hazardous potentials. An innocent person may be erroneously charged or convicted of

committing a heinous crime, or a guilty felon may continue his wrongful ways to the detriment of society as a whole.

A consequence of openness is the exposition of falsified data (deliberate or not), which will eliminate obfuscation to the end that progress will be promoted. Society is a totality, not a bifurcated, dissected mishmash subject to the whims and fancies of a few selected prima donnas who have established themselves as the final arbiters of what is good for society or for the country as a whole. For this reason, forensic scientists, all of us, individually and collectively, in toto, are responsible to all members of our society—every citizen of this free nation. We are under total obligation and professional responsibility to protect each member of society. This includes ALL persons, even those afforded the constitutional safeguards following accusations of felonious conduct, or imprisoned, or pitifully “incarcerated” within mental institutions without being granted their corollary right to treatment.

Thus, you and I, together and as individuals, face 1976 and its challenges. Acceptance of the challenges before us is our individual choice. We can make America the Beautiful a better place to live. Great as our nation is, her greatness can yet be furthered by our conduct as professionals within the forensic science community. The spice of our choice may be bitter or sweet—depending entirely on our election of courses. We can wrangle or respectively debate. We can shun our responsibilities or accept them. We can exercise our freedom without license. We can work to build up by active participation or assist in tearing down by destructive conduct or inactivity. Nevertheless, the choice is ours. May I challenge you to join with all of us who are concerned for the future of our country and our Academy in actively working for the progress that can be ours in the forensic sciences in the decades ahead?

Now, in closing, I urge your support of Dr. James T. Weston, the incoming President of the Academy. The reign passes to him and your Executive Committee for the ensuing year of 1976–1977. Your continued support can make this upcoming year successful and memorable. Accept the challenges and go forward.

I wish to thank you for the opportunity to serve as your President. Our prayers go with each of you as we ask the Lord's Blessing upon each member present. It is our hope and desire that we may see you next year in San Diego, California. Until then, may good health, good cheer, good fellowship be yours. Thank you—one and all.

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