

## GUEST EDITORIAL



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### Conflicts and Challenges for the Medical Examiner

Recently, an unprecedented number of medical examiners who serve as administrative heads of local or state medicolegal investigative agencies have come under public attack and have become news headlines.

Is this an indication that medical examiners as a group are generally poor administrators and/or professionally incompetent? One of our colleagues, William G. Eckert, M.D., stated, "sooner or later all medical examiners get into trouble." Does this mean that trouble and controversy are "inherent" in the nature of the profession and particularly in the position of the chief medical examiner?

I am a firm believer in the medical examiner system as compared to the coroner system, but I am convinced that trouble and controversy are in part "inherent" in the medical examiner system as it is currently set up, especially in the large metropolitan multiracial multiethnic population environment.

Historically, the medical examiner system was first established in the United States in 1877 in the Commonwealth of Massachusetts, and decades later in 1916, New York City replaced its politically selected nonmedically qualified coroner with a medical examiner. It was not until after World War II, however, that the medical examiner system, with the chief medical examiner selected usually under the civil service system, spread to some of the other states, replacing the traditional elected lay coroner. In some jurisdictions, the chief medical examiner may be appointed outside the civil service system by such diverse groups as a Post-mortem Commission, a health agency administrator, the County Commission or Board of Supervisors, or by an elected official such as the Governor or the county Mayor. Other jurisdictions which have retained the coroner have added the requirement that the coroner must be medically qualified. In most of the smaller jurisdictions, however, an elected lay coroner still heads the medicolegal investigative office and a local physician is retained to provide any needed medical services.

The sources of problems for the medical examiner that can jeopardize his reputation and his position are the people and the agencies he must deal with in the performance of his duties: the surviving family and friends of the deceased, civil rights activists, the justice and the law enforcement agencies, the medical and legal professionals, the news media, and the bureaucrats and the politicians.

### **The Surviving Family**

In our materialistic society the possibilities of large financial gains or losses for the surviving members of the family of the deceased may create problems for the medical examiner.

Life insurance policies in the United States are usually written with a double indemnity clause for accidental deaths and limitations on coverage for suicides during the first few years an insurance is in force. Thus, the families want the sudden death of a member to be preferably certified as accidental rather than a suicide. Some families of obvious suicides place persistent pressures on the medical examiner to change the stated cause of death on the death certificate. There are, of course, families that do not want a suicide designation on the death of a member because of religious convictions.

The insurance companies, on the other hand, would prefer the cause of death to be designated as other than accident, so they often closely monitor the medical examiner's investigations of sudden unexpected deaths of clients with large life insurance policies. The insurance company representative may refuse to accept the medical examiner's certification of accidental death, citing "facts" from his own investigations. The medical examiner is caught in the middle of the controversy between the family and the insurance company.

Intrafamily conflicts over inheritance rights can also place the medical examiner in a difficult situation, especially when the decedent had been married more than once and step-relationships are involved. When the death of the key family member occurs under circumstances perceived to be suspicious in the eyes of the children from the first marriage, the second spouse may be suspect, and any evidence presented by the medical examiner may be twisted by either side to support its viewpoint.

Even without the involvement of substantial inheritance, any suspicion of homicide, when both the victim and the suspect are its members, may divide the surviving members of the family emotionally. Each side will interpret selective findings to support its own belief, ignoring other contradictory evidence. Either or both sides may vent their frustration by accusing the medical examiner of mismanaging the case.

In other seemingly uncomplicated cases, in the immediate aftermath of the sudden unexpected death, a surviving family member under severe stress from the shock, may vent his/her grief by displaying anger against the Medical Examiner's Office. This frequently takes the form of claims of alleged loss of valuable property from the deceased while in the custody of the Medical Examiner's Office. A family member will report that the deceased

always wore a valuable piece of jewelry or that he/she had been carrying a substantial sum of money which was not among the personal effects returned to the family. It is implied, if not explicitly stated, that someone in the Medical Examiner's Office had stolen the jewelry or the money. Loss of evidence or property belonging to people in police custody seldom make headlines, but in the Medical Examiner's Office, such loss is "stealing from the dead," and not to be tolerated. Even when such accusations are proven beyond doubt to be completely false, once such stories get out, voiced by unhappy family members to friends, from such friends to acquaintances, the spreading rumors can resurface again and again, impossible to eradicate, and continue to plague the chief medical examiner.

### **The Civil Rights Activists and the Law Enforcement Agencies**

The chief medical examiner, particularly in a large urban jurisdiction with a mixed racial ethnic population, is often caught between a minority community's civil rights activists and law enforcement personnel, two groups with differing perceptions of society and its institutions. Whether it is the death of the minority person or the law enforcement officer, any death involving either is a potential source of controversy and confrontation. The minority group, allegedly seeking fair and equitable treatment and justice, may in fact be seeking revenge. The law enforcement agency may be more interested in protecting its image than in seeking the truth.

The chief medical examiner, as the official entrusted with the responsibility of determining the cause and manner of death, needs only to present the facts based on medical evidence, but when the facts go against the minority group's viewpoint, the chief medical examiner is looked upon as part of the "establishment" as a government official, and may be accused of "cover-up." Especially difficult are cases of death of a minority person in jail or under custody of law enforcement officers. And, indeed, when facts are not favorable for the law enforcement agency, some officials may very subtly or not so subtly put pressure on the chief medical examiner to "coverup" to protect a "fellow government official."

### **The Criminal and Civil Justice Systems**

Forensic medicine is the only medical specialty which deals officially with government legal investigative and enforcement agencies. The field of forensic medicine thus straddles law enforcement and legal investigations.

The medical examiner uses and applies medical knowledge and evidence to arrive at the factual cause and mode or manner of death. Medically, the direct cause of death may be clearly defined, but as a result of the nature of the circumstances surrounding the death, the interpretation may be questioned. Attorneys then enter the case.

In our adversary court system, "winning the case" and not "seeking the truth" are too often the "aim of the game." Under these circumstances, when the medical examiner is called to testify, his choice of words is often very very important, sometimes more important than the context of his testimony. The attorney for the prosecution or the defense can pick up a single word in his testimony and twist his statement in a completely opposite direction, or hang the whole case on a single word, completely ignoring the contextual meaning of the testimony. The medical examiner must thus be able to think like an attorney to avoid such traps when testifying. Otherwise, justice may be thwarted.

In such an adversary system, both sides cannot win. The losing attorney, unhappy and upset over the results, will often openly criticize the medical examiner, claiming the case was mishandled, that proper tests had not been done, or vital evidence had been discarded prematurely, as in one of our cases which was tried more than two years after the death of the victim. On occasion these attacks can be very vicious, spreading from the specific case to the

whole functioning of the Medical Examiner's Office and focus on the person of the chief medical examiner, himself.

### **The Medical Community**

The work of the medical examiner is often poorly understood by his fellow physicians in the other medical specialties. Although the medical examiner has the same basic training and knowledge as the medical doctors whose task is to use medical knowledge to care for and keep alive the living ill, he is often isolated, mistrusted, and not considered to be "one of us" by the medical community.

The physicians in the other medical specialties deal with death as an unfortunate end of their task of providing care. Their involvement with death is primarily from the viewpoint of the medical issues of diagnosis and treatment in prolonging life. For the medical examiner, the death of a person is the beginning of his professional involvement, the beginning of his task of clarifying the chain of events which led to the death and the medicolegal issues. Nevertheless, the medical examiner's ultimate task and goal is also to keep the living alive. We do not treat individual patients, but through the knowledge and the information gained from our care of the dead, we provide the directions for preventing other similar deaths. The medical examiner is in the unique position to save more lives than the average physician who treats only individual patients. We prescribe treatment for the whole society based on our medical findings.

The field of forensic medicine involves legal matters as well as medical. Indeed, some medical examiners are licensed attorneys as well as licensed physicians. Thus, the medical community places the medical examiner in a category outside of medicine. Neither is he accepted, even with a law degree, by the attorneys as a member of their profession. The medical examiner finds himself in a "neither fish nor fowl" situation as a professional, a member of a profession all his own, somewhere between medicine and law.

Forensic medicine is a specialty of increasing importance in this era of escalating medicolegal liability problems and rising public expectations of "perfection in the services rendered by others" coupled with unwillingness of individuals to take any responsibility at all for the consequences of his/her own actions. Witness the man who sues the cigarette company for damage to his health after years of smoking several packs of cigarettes a day.

Distrust of patient care physicians is also tied into the very nature of the medical examiner's work. One of the duties of the medical examiner is to investigate deaths of patients where there is a suspicion of iatrogenic complications. He also monitors the care or lack of care of patients in nursing homes as part of his death investigation duties. Thus, the medical examiner "polices" the competence and skill of his fellow physicians in the patient care specialties. And, it goes without saying, that we all to some extent "shy away" from "policemen" at times, even when we have done no wrong knowingly, for there is always the fear that unknowingly we may have erred.

### **The News Media**

The medical examiner, by the very nature of his profession, attracts the interest of the news people. News media persons seek items of news value. The more sensational the story, the greater the news value and the greater the sale of newspapers and the larger the broadcast audience, which all translates into more money for the news media corporations. As one reporter explained to me, their criteria of newsworthy materials involve the 3 D's: death, disaster, dirt.

Death and disaster are certainly a constant part of the medical examiner's daily work. The medical examiner handles all cases of unexpected and sudden death, whether by homicide,

suicide, or accident, or from “natural causes” of unexpected origin. He handles all cases of deaths from disasters, major and minor, whether caused by natural forces such as an earthquake or “manmade” such as an aircraft accident. As for the third D, “dirt,” in the sense of an unsavory situation surrounding the life or the circumstances of the death of an individual, that is a moral value judgement made by the news media or the public or both. The medical examiner reports on the factual circumstances and the cause and manner of death based on forensic medical investigations. In my opinion, it is not in his province to make such judgements. “Dirt” in the media sense has no part in the work of the medical examiner. It is the creation of the news media.

It is the news media’s search for “dirt,” however, which can set off an avalanche, hurting the career of a medical examiner and putting his position in jeopardy. In their search for the sensational, the media focus on the exceptional cases of unexpected sudden deaths of celebrities. In handling such cases, the medical examiner is placed in an untenable “damned if he speaks and damned if he doesn’t” position by the zealous news people. The medical examiner is often blamed for presenting the facts on the circumstances of a celebrity’s death which allegedly damages the deceased’s public image.

My own policy is to answer truthfully questions put to me by the news people. If I answer “no comment” or outright lie to their questions, I would be accused of a “cover-up” and the news people will pick up rumors, half truths, and distorted information from other sources. I prefer personally to be “damned” for presenting the truth, for in my opinion, “truth is always kinder than rumors.” Rumors are always not only distorted but exaggerated.

When the news focuses on the medical examiner, himself, or his office, it is always to attack with accusations of some alleged shortcomings or downright wrongdoings, often on very flimsy rumors and unsubstantiated statements made by a single disgruntled employee in the department. Statements quoted out of context and deliberately given connotations not intended, attributing to him statements made by others, are other tactics used by the journalist to put the medical examiner on the spot and in the “hot seat.” The news media crusader targets in on every minutia, somehow managing to twist every virtue into a fault, magnifying problems all out of proportion. Every shortcoming in the department, much of it beyond his control, are attributed to mismanagement by the chief medical examiner. When the politicians get involved in the attack, the news reporters give wide publicity without reprimanding or correcting them for even obviously false statements against the medical examiner.

Some journalists believe that all they need to do is to stir up the mud, create as much damage as they can to sell their product. They take no responsibility for the havoc, hurt, and disruptions they’ve caused in the lives of innocent people. Take responsibility? That’s not part of their job, they say. Then, when a responsible journalist writes a reasoned supportive report, the article is rarely published. It is “scratched” by the editor who can usually be counted on to support news reports which attacks the medical examiner with editorial attacks.

That kind of news reporting and editorial serve no useful purpose, for it is misdirected and results in no improvement of the conditions they are purportedly exposing, for the real source of the problems is obscured by all the “mud and dirt,” and remains uncorrected.

### **The Politicians**

Although some medical examiners may accept selected private cases outside their own jurisdictions, forensic medicine is the only medical specialty which is almost exclusively practiced in the government sector. Because the Medical Examiner’s Office, being a public service office, is publicly financed, the chief medical examiner who heads the department must deal with the politicians who control funding.

The politicians and the public have little understanding and undervalue the essential services provided by the Office of Chief Medical Examiner, and are unwilling to allocate sufficient funds necessary to give quality service. When money is needed for the living poor, no one is interested in providing funds for what is mistakenly perceived to be only the morgue for the dead. They fail to see that the results of our work, properly applied, can and do help the living by raising questions on the choice of life styles, environmental issues, health care, public safety, and public policy on a host of other societal problems. Shortcomings resulting from inadequate funding of the Office are too often blamed on the chief medical examiner. The reality is that no department can function adequately with outdated equipment, insufficient supplies, and short staffing, regardless of the competence of the department head and his staff.

The chief medical examiner, as an appointed official, also suffers, as do all appointed officials, from the fact that he serves "at the pleasure" of the appointing official or official body, even when he is under the civil service system. An elected official, as the coroner usually is under the coroner system, is answerable only to the voters and can be removed only by them. An appointed chief medical examiner can be fired at the whim of the politicians or bureaucrats who appointed him. This places the chief medical examiner in a very vulnerable position. Under the civil service system, his position should be protected from political interference, but in actuality, it is not. When he is not under the civil service, he is powerless to even fight back.

Politicians are notorious for making "quicky" decisions and grabbing for "straw solutions" for complex problems. They are particularly responsive to newspaper reports and editorials attacking the quality of public service provided by a department within their jurisdiction. The usual "quicky" solution is to "scapegoat," and the blame too often falls on the identifiable department head of the public service under attack. Usually the cause of the situation under attack is largely due to the actions or inaction of the politicians themselves, and the department head, the victim of the situation, is powerless to remedy the condition without cooperation of the politicians. The department head is now doubly victimized.

The chief medical examiner on the spot, first the victim of the biased news media attacks, now becomes the victim of ambitious politicians seeking publicity for themselves, who jump in, making wild statements with no basis in fact. The ultimate solution for the politician is to fire the department head after "milking" the situation for maximum publicity. This usual political solution of "bad-mouthing" and "scapegoating" the department head without adequate investigation of the verity of the news reports and editorials and without seeking the true reason behind the news media "expose" only makes the situation worse because it is no solution at all.

### **The Challenge**

The medical examiner does not operate in a vacuum. The complexities and conflicts challenging the medical examiner are reflections of the complexities and conflicts of the current social environment in which we live. We can try to avoid the conflicts by being minimally involved in society's problems, by limiting our work to the simple pronouncement of the cause of death as the coroner's physicians are limited under the traditional British coroner system. Or we can accept the challenge, rise to the responsibilities inherent in the best medical examiner system which permits us to make vital decisions based on our own best judgement, and take the lead in seeking solutions.

The alert medical examiner is often the first to spot impending social problems from the cases coming under his/her jurisdiction. We medical examiners can sound the alarm and alert the public to seek solutions, or we can be blind, or seeing, ignore the significance of the trends revealed to us in the flow of cases coming into our Office.

As a forensic pathologist-medical examiner, we occupy a lead position in an emerging and increasingly important medical specialty area of forensic medicine. I, for one, believe that the medical examiner should accept the challenge, the opportunities open to him/her/us, to take the leadership role in defining, publicizing, and seeking solutions to the social, public health, and environmental problems which some among our fellow human beings are constantly mindlessly creating. We should use the knowledge gained from the information obtained by our studies of the dead to help better the lives of the living, to keep the living alive. Otherwise, our work will be an "exercise in futility" for we surely cannot bring the dead back to life.

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