BRIEF COMMUNICATION

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The Impact of Homicide Trials on the Forensic Pathologist's Time—The Fulton County Experience

ABSTRACT: Subpoenas received for criminal trials related to homicides in Fulton County (Atlanta) Georgia were tracked in a computer database for an 18 month period in order to determine the proportion of forensic pathologist worktime required for testimony in homicide cases. The number of subpoenas received annually amounted to 64% of the average number of homicides occurring annually. Testimony was required in about 33% of cases in which a subpoena was received, and, therefore, the number of testimony appearances per year was about 21% of the average annual number of homicides. Assuming a 40 hour work week for 52 weeks per year and an average of 3 hours of time preparing for, traveling to, and testifying in court, the time required of the forensic pathologist to testify in homicide trials amounted to about 2% of a full-time-equivalent. Although the time required for testimony in homicide cases may vary among jurisdictions because of the nature of its homicides, distance and travel time to court, and other factors, the data presented here may be used to estimate the impact of homicide trial court time on forensic pathology practice.

KEYWORDS: forensic science, forensic pathology, testimony, court appearances, homicide, subpoenas

Having to testify in court about homicide cases requires some of the forensic pathologist's professional time. Although the literature contains articles about the ethics of testimony, the need for peer review of testimony, reviews of specific testimony content, the admissibility of selected types of testimony, debates about testifier qualifications, and other topics, an article could not be located that addresses the impact of testimony on the forensic pathologists professional work time (1–7). This report provides data which may be used to estimate the number of subpoenas, the number of testimony appearances, and the proportion of a forensic pathology full-time-equivalent that may be needed to provide such testimony on an annual basis.

Methods

Fulton County, Georgia includes most of the city of Atlanta and has an estimated 1996 population of 670,000 people. Virtually all homicides are investigated by the Fulton County Medical Examiner

(FCME) and when prosecuted, by the Fulton County District Attorney. Four forensic pathology full-time-equivalent positions are allocated at the FCME to oversee and conduct approximately 1500 death investigations with certification each year.

The FCME maintains a computer database of case investigation information, subpoenas received, and disposition of cases with a subpoena received. The number of homicides occurring in 1993, 1994, and 1995 was determined from the FCME database to determine the average number of homicides that occurred annually. The number of subpoenas received between Dec. 1, 1994 and May 31, 1996 (18 months) for homicide cases occurring in Fulton County was determined, as were the numbers of cases disposed of without testimony and those that involved testimony.

To further characterize the nature of subpoenas received, data for all subpoenas received during 1995 was reviewed to determine the year in which the respective homicides occurred and the frequency with which more than one subpoena was received for a given case.

Results

The average number of homicides per year was 229 (687 total during the three year period) resulting an average, crude annual homicide rate of 34/100,000 population.

Two-hundred-fifty-three subpoenas were received during the 18 month study period. Guilty pleas precluded the need for testimony in 81 cases, and testimony was required in 75 cases. The remaining 97 remained open for further disposition. Overall, testimony was required in 30% of homicide cases for which a subpoena was received, and during the 18 month study period, an average of four testimony appearances was required per month (48 per year).

During 1995, 146 subpoenas were received. Thus, the number of subpoenas received in one year amounted to 64% of the average number of homicides annually. For the subpoenas received during 1995, the number or homicides occurring in various years were as follows: 1989 ($n = 2$), 1990 ($n = 1$), 1991 ($n = 1$), 1992 ($n = 1$), 1993 ($n = 42$), 1994 ($n = 83$), and 1995 ($n = 15$). Thus, 57% of subpoenas were issued for homicides that occurred during the previous calendar year. For 30 homicides, more than one subpoena was received due to case continuance (postponement).

For the 83 subpoenas received in 1995 for homicides cases that occurred during 1994, testimony was required in 27 (33%) cases, comparable to the overall testimony rate of 30% when calculated without restriction to a given year of homicide occurrence or subpoena receipt.

Discussion

On the basis of the data, the following estimates may be made if the average number of homicides occurring annually is designated as X:

Number of annual subpoenas = X * 0.64 (e.g., 229 * 0.64 = 146)
Number of annual testimony occurrences =
$$X * 0.21 \text{ (e.g., } 229 * 0.21 = 48)$$

Estimates may also be based on the homicide rate, where R is the absolute number in the numerator of the homicide rate expressed in annual homicides/100,000 population:

Number of annual subpoenas = R * 4.29 (e.g., 34 * 4.29 = 146)
Number of annual testimony occurrences =
$$R * 1.41 \text{ (e.g., } 34 * 1.41 = 48)$$

If it is assumed that an average case requires three total hours of time (1-h case review, 1-h travel and waiting, and 1-h on the witness stand), the data indicate that approximately 144 hours of forensic pathologist time is needed for homicide case testimony annually in Fulton County. With four full-time-equivalent (FTE) forensic pathologist positions allocated, and assuming an even distribution of cases among forensic pathologists, approximately 38 h of a forensic pathologist's time is spent each year for testimony in homicide cases. Assuming a 40-h work week for 52 weeks per year, this amounts to approximately 2% of each forensic pathologist FTE. The greatest burden of time imposed by subpoenas may, therefore, relate more to the processing of subpoenas and the correspondence that is required to track pending court cases to determine if, and when testimony may be needed.

In Fulton County, the courthouse is only a few blocks from the FCME. In settings other than Fulton County, where long distance travel may require many hours, the proportion of an FTE required for testimony may be much higher. For example, the author occasionally performs autopsies at a central state lab facility for counties throughout the state of Georgia. For the most recent 12 homicide cases in which testimony was required, an average of 9.5 h was spent portal to portal. Thus, in such a work setting, as much as 6% of an FTE may be required to support testimony time in homicide trials.

The amount of time required to prepare for, and testify in a given case may also depend on other factors such as case complexity, the amount of time spent waiting to testify while at the courthouse, and the number and duration of recesses and other delays during court proceedings. The characteristics of homicide in a given area may also modify the need for testimony. For example, in areas in which there are large numbers of relatively "straight-forward domestic" homicides, the need for testimony may be less than may occur where homicides may be relatively rare but sensational or complex when they occur. Such considerations are difficult to quantify, and the data presented here, although perhaps not generally applicable, may be useful in many jurisdictions—especially urban ones. Based on available information, it seems safe to estimate that 2% to 6%, and probably no more than 10% of a forensic pathology FTE would be required to support testimony in homicide cases, excluding, of course, the time required to perform the autopsy and prepare the necessary reports.

The finding that 57% of subpoenas were issued for cases that occurred during the preceding calendar year may have direct implications for forensic pathology training programs. If a forensic pathology fellow departs a jurisdiction immediately following his/her fellowship year, the need to fund travel to return to court may be considerable unless a "permanent" staff or attending forensic pathologist is permitted to testify in lieu of the fellow.

Finally, it need be remembered that testimony time may be required for cases that result in civil law suits and for those forensic pathologists who engage in serving as an independent expert witness. Consideration of the time required to engaged in such endeavors is beyond the scope of this article.

Conclusions

The number of testimony occurrences and amount of time that may be required of forensic pathologists to testify in homicide trials may be estimated on the basis of available data. In the jurisdiction, the number of testimony occurrences annually equaled 21% of the average annual number of homicides, and the time requirement may be estimated to be about 2% of a forensic pathology FTE. Local factors may significantly affect these estimates, however.

References

1. Mossman D. Is expert psychiatric testimony fundamentally immoral? International J Law Psychiatry 1994;17:347–68.
2. Slovenko R. Expert testimony: Use and abuse. Medicine & Law. 1993;12:627–41.
3. Marwick C. Court ruling on "junk science" gives judges more say about what expert witness testimony to allow (news). JAMA 1993;270:423.
4. Menon JW. Adversarial medical and scientific testimony an lay jurors; a proposal for medical malpractice reform (review). Am J Law & Medicine 1005;21:281–300.
5. Weintraub MI. Expert witness testimony: A time for self-regulation? J Child Neurology 1995;10:256–9.
6. Anonymous. MI: Expert testimony—$1.3 million judgment: Expert's qualification issue. Regan Report on Nursing Law 1993;34:3.
7. Davis JH. Peer review in the courtroom. J Forensic Sci 1986;31:803–4.

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