

## Letter to Editor—Autopsies on executed federal prisoners

Sir,

In spite of federal and state laws that have granted autonomy for death investigation to local authorities, successful challenges were made in 2001 to prevent autopsy examinations following the executions of federal prisoners, including Timothy McVeigh. In blocking protocols that normally apply to any deaths occurring in custody, the challenges by McVeigh and others raised serious questions regarding the ability for medical death investigators to fulfill their statutory duties. The actions of death row inmates and related legal proceedings, additional political considerations, presented major conflicts with standing policies.

Although there are no specific mandates, in most jurisdictions, it is strongly recommended that all deaths occurring in custody should be subject to an autopsy, not only to determine the cause of death, but frequently to demonstrate that there have been no suspicious injuries that could be attributed to prison staff. Over the years, the Vigo County Coroner has worked by this premise, cooperatively but independently with personnel of the appropriate jurisdiction.

After the initial meeting with the Warden for the Terre Haute Federal Penitentiary in 1995, expert medicolegal comment was sought to confirm the need for autopsy of executed prisoners. Informal discussions with many forensic pathologists reinforced the concept, that the routine practice of doing an autopsy whenever prisoners die in custody must be followed, even in this unique situation. In addition, points not previously considered were raised regarding the ethical issues of participation by a physician coroner, in even pronouncing death following an execution. Any participation, including the pronouncement of death, is expressly prohibited by the AMA Council on Ethical and Judicial Affairs.

With notification that the first executions would take place in late 2000 or early 2001, several death row inmates notified the Warden of their opposition to autopsies. This was followed in October 2000 by one inmate's "Pro Se Motion to Preclude Autopsy" in Federal District court on the basis of religious beliefs.

Briefs opposing this motion were filed by the Coroner of Vigo County Indiana, the United States Bureau of Prisons, and the United States Department of Justice, citing Indiana Coroner Statutes, the fact that the inmate's death would be classified as a homicide, the fact that the inmate was planning to be cremated, and supporting federal law.

Nevertheless, the first inmate's motion to preclude an autopsy was granted. Subsequently, Oklahoma City bomber Timothy McVeigh had his execution date set. Initial preparations by the Bureau of Prisons, the Department of Justice, and the Vigo County Coroner were again made to conduct an autopsy unless this was specifically prohibited by the Federal Court system. These plans were altered on January 31, 2001, when Federal Bureau of Prison authorities in Terre Haute were informed that newly appointed Department of Justice officials had decreed that autopsies would not be necessary following federal executions.

Given the prior Federal Court decision, the withdrawal of support from both the Justice Department and the Bureau of Prisons,

and the limited financial resources available to the Coroner's Office to mount any further legal challenge, the Coroner and County Attorney met with attorneys for McVeigh, and an agreement was reached for a non-invasive postmortem examination. Although Mr. McVeigh had expressed religious, ethical, and philosophical objections to an autopsy being performed on his remains, both sides agreed that the scheduled execution did indeed invoke the Coroner's statutory duty to investigate.

The McVeigh decree and the earlier court ruling present several disturbing implications, not only for certifying the death of executed federal prisoners, but also for the autonomy of death investigation systems nationwide as they apply to deaths in custody. The events taking place in the Terre Haute Federal Penitentiary suggested a coordinated effort to block autopsies from being performed on executed prisoners, all utilizing the primary argument of religious objections.

In somewhat contradictory rulings, the Pennsylvania Federal Court had ruled that the local Coroner had no "valid interest" in regard to conducting an autopsy on a federal inmate, but at the same time was willing to permit the Coroner to perform a non-invasive examination. If the Pennsylvania ruling on "valid interest" were to be followed logically, one consequence would be that the Coroner never has a "valid interest" in regard to this type of death. Yet Indiana law still requires that the Coroner be responsible for signing the death certificate on any "unnatural" death? If the Coroner refuses, who may then legally certify the death?

It must be asked as part of this discussion what are to be considered as legitimate religious, moral, and ethical objections to an autopsy, and if it is appropriate to express cynicism that these objections are merely an attempt to manipulate the system prior to implementation of a judicial sentence? Even McVeigh had repeatedly argued that he was in favor of public scrutiny of government actions including his execution. This public scrutiny extended so far as to require the issuing of press credentials to nearly 1400 journalists from around the world. Most forensic specialists would argue that an autopsy fits quite well with the expressed desire for scrutiny, and would specifically address the implied need to independently review the execution process. Yet McVeigh expended considerable effort to block an autopsy on "moral and religious" grounds. Does this statement suggest that an autopsy is inherently immoral or at odds with religion? Does McVeigh's assertion that he did not want to be subject to postmortem "mutilation" even deserve a response, when he had elected to have his remains cremated?

The events and Federal Court rulings, rather than settling the controversy regarding the need and prerogative of death certifying agencies to proceed with their statutory duties, raises several questions that need to be addressed. It is appropriate that interested organizations representing the nation's medical examiners, coroners, and other death investigators begin a dialogue that will clarify this issue by whatever means are necessary.

Roland M. Kohr, M.D.  
Forensic Pathologist  
3901 S. 7<sup>th</sup> St.  
Terre Haute, IN 47802