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Relationships of the Medical Examiner

Cyril H. Wecht*

THE PHRASE "Medical Examiner" has been used in several contexts, and it should be stated that this paper deals with the medical examiner who is a trained forensic pathologist and who works within the framework of a medical-legal investigative facility. He is not the medical examiner who gives examinations to graduating medical students or interns who are applying for state licensure, nor is he the medical examiner who performs physical examinations for insurance companies, community health centers, industries, etc. Although I am sure that many of us could probably suggest a more correct name for the forensic pathologist who works within the medical-legal investigative facility of his community, the phrase is here to stay, so we may as well accept it.

With regard to further terms, it has long been my impression that the definitions of "legal medicine," "forensic medicine," and "medical jurisprudence" have been vague and varied. Certainly, in my own mind, I am able to come forth with different definitions at various times, depending on whom I am speaking to, and which aspect of that broad field of endeavor that arises between the two great professions of law and medicine is foremost in my thoughts at the time. For the purpose of this discussion, I would like to consider "legal medicine" as that field of study and accumulation of materials that deals with the application of medical knowledge to the administration of justice. I would consider "forensic medicine" as being synonymous with "legal medicine," and I would differentiate "medical jurisprudence" from "legal medicine" by referring to the former as the application of principles of law to the practice of medicine.

Having set forth these relatively simple definitions, I should like to make a rather bold statement that perhaps will find disagreement among some attorneys and physicians. With all due respect to the many skilled and competent men who are active in various aspects of legal medicine and medical jurisprudence, I would suggest that no one field is so intrinsically and unquali-

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fiedly bound up in the practice of legal medicine as is the work of the medical examiner. Again reverting to definitions, the medical examiner is one who deals on a full-time professional basis with cases that in almost all instances eventually involve the application of some principles of legal medicine.

The laws of the 50 states and the District of Columbia vary considerably with regard to the circumstances under which a medical examiner may be called in to investigate a case and to subsequently perform an autopsy. I have recently concluded a study on "The Medico-Legal Autopsy—Pertinent Statutes of the 50 States and the District of Columbia," and I was greatly chagrined by the many discrepancies and variations that exist among numerous states as compared to the Model Medical Examiner's Act compiled some years ago by the National Municipal League with the assistance of Dr. Richard Ford, Medical Examiner from Boston, Massachusetts. The Model Act, which has served as a basis for the laws that have been drawn up in the states that have good medical examiner systems such as Virginia and Maryland, and the individual urban communities that have good laws such as Philadelphia, New York City, Detroit, and Miami, states that the medical examiner will take jurisdiction in all cases of sudden, violent, suspicious, unexpected and unexplained deaths. More specifically, he assumes jurisdiction in cases of perioperative deaths; that is, not only deaths occurring on the operating table but also deaths that occur when a patient is being prepared for surgery or in the immediate post-operative period. By specific language in many of these states and urban communities, physicians and law enforcement officials must report to the medical examiner all deaths related to industrial employment and, of course, all deaths arising from alleged, suspected, or known criminal acts. All deaths occurring in automobile, airplane, and other vehicular accidents must be investigated and the bodies subjected to post-mortem examination by the medical examiner.

When you take all of these areas together, and when you further keep in mind the fact that the medical examiner deals with these problems 365 days of the year, then you realize that truly this person is completely bound up in the many complexities of legal medicine more than anyone else in the field.

No one knows better than the experienced and erudite members of the American College of Legal Medicine that the amount of money involved in civil cases in a large metropolitan commu-

nity in one year totals in the millions of dollars, and in many of these cases, usually 70 to 80 percent (excluding actions of contract), medical evidence or testimony is required. In a significant percentage of these instances, the civil case will be in the form of a wrongful death action, and the results of the autopsy will become an item of crucial importance. Inasmuch as most of these cases will have arisen out of injuries alleged or known to have been incurred at the time of a particular accident, these individuals will most likely have been autopsied at the medical-legal investigative facility within the particular community. Even if some of these cases have not been autopsied by the medical examiner, almost all of them will have been brought to the attention of the medical examiner's office, and some type of investigation report will be present in his records.

In the area of criminal law, perhaps closer to 100% of all cases involving deaths will have been investigated by the medical-legal investigative facility, and autopsies will have been performed by the medical examiner.

Thus, it becomes immediately apparent that not only millions of dollars, but hundreds of lives, or the liberties of hundreds of people, will be intricately related to the activities of the medical examiner in any given year in a large urban community.

This is legal medicine on a full-time basis. There can be no doubt about it.

With the tremendous responsibilities and burdens, as well as the many rights and powers that flow from and to the Office of the Medical Examiner, there obviously must be a keen awareness on his part of the roles that are being played in the community by numerous other individuals and organizations. The relationships of the medical examiner are many and all are important, and it behooves a good medical examiner to always be fully appreciative of this fact. Let us proceed to briefly examine some of these relationships and discuss some of the potential problems and their suggested solutions.

I. Physicians

This is probably as good a place as any to begin when discussing the relationships of the medical examiner. It would be an extremely difficult and burdensome task for a medical examiner if he did not have the sympathy, cooperation, understanding

and respect of the practicing physicians in the community. I seriously doubt that any medical examiner would exist long in a particular community if he did not get along well with the majority of the practicing physicians.

This is not to suggest that the medical examiner must compromise his principles or find ways to evade the language of the statutes of his State so as to please a particular physician in a given case. I do believe, however, that the medical examiner must keep in mind that he is, from a professional standpoint, first and foremost a physician, and that he owes an obligation to the practice of medicine to treat other physicians with respect and courtesy and to recognize the many problems that confront them in the daily practice of medicine.

After many decades have passed in a community with a medical examiner system, the potential problems that might arise between a practicing physician and the medical examiner's office become fewer in number. The young men going to the local medical school, the interns and residents at the hospitals in the area, and the practicing physicians in the community are raised in the traditions of the medical examiner's office as far as their studies in pathology and legal medicine are concerned, and the proper things to do in many medico-legal matters become thoroughly ingrained into their thought processes without the necessity of engaging in a specific propagandizing program.

However, in those communities in which the medical examiner's office has not been present for too long (and this would be true in most communities in the United States), the situation is not quite as fortunate. In these communities, the concept of the medical examiner has not become fully ingrained in the community, inasmuch as the physicians who are in the fifth, sixth, and seventh decades of their lives probably have never heard of a medical examiner or certainly have never worked with one.

It usually takes a full generation or more before the practicing physicians become fully aware of what the medical examiner's office is in their community and what their responsibilities, rights and obligations are with regard to the medical examiner.

The medical examiner should always be willing to speak personally with a physician and to discuss any case with him. He should always extend an invitation to the physician to be present at an autopsy and should be willing to receive a phone call, answer a letter, and meet with a physician who is desirous of ob-

taining information concerning the results of a medico-legal autopsy performed by the medical examiner.

With regard to many physicians, and particularly interns and residents, an important point should be made concerning autopsy consent. What has happened, unfortunately, in too many cases, is that the medical examiner's office has unknowingly and involuntarily been used by physicians as an indirect, but effective, weapon in forcing the next of kin to grant autopsy consent to the physician. The way that this works is as follows:

The physician is confronted with a death that is of medical interest or academic concern to him, and he would like to get autopsy consent. When he runs into a difficult situation and is denied such permission by the next of kin, some physicians will then suggest to the family that if they do not allow the hospital to do the autopsy, then the body will be taken down to the dark, dirty morgue where ghouls known as medical examiners will investigate and cut open the body in a thoroughly unscientific manner. The impression is often created in the minds of the next of kin in such situations that they will be lucky if they ever see the body again, or if they do, that it will ever come back in recognizable form. It is not surprising, therefore, to note that in situations like this, the intern or resident is usually able to get consent for an autopsy to be performed by the hospital pathologist.

Medical examiners are aware of these maneuvers and have taken strong steps to stop this sort of practice whenever it arises. Once again, in medical examiner jurisdictions where the office has been around for a long time, such practices hardly ever occur, and I do not mean to suggest that they occur in any community with great frequency. However, in order to avoid ill feelings between the practicing physicians in the community and the medical examiner's office, it must be made abundantly clear to the former group that the medical examiner cannot be used as a tool in prying autopsy consent from a family in a case in which the death is obviously a natural one and in which no circumstances are present that would involve the medical examiner's office.

The medical examiner should frequently consult with a physician in a given case, not merely to be courteous, but hopefully to obtain as much useful information as possible. It would seem to me that the complexity of a medical-legal autopsy is inversely proportional to the amount of information that is available to the

forensic pathologist at the time he begins the autopsy. The more information that can be obtained by thorough investigation of the scene, interrogation of all people who have any information to give, and complete checking of physicians' and hospital records involving particular illnesses, etc., the fewer the problems and puzzles there are remaining in the performance of the autopsy. Therefore, the medical examiner should not be too proud to seek information from practicing physicians in any case in which such information is necessary or desirable.

Although not directly relevant to this discussion, the subject of medical malpractice should be touched upon briefly because of the misconception that some attorneys and physicians have regarding the relationship of the medical examiner to the doctors in the community vis-à-vis the important problem. The medical examiner is not a policeman to watch over physicians any more than he is a policeman for any other purpose. However, by the very nature of his work, it is understandable that he will become involved in many cases of alleged professional negligence. He should conduct his investigation and post-mortem examination in the same manner that he would any other case, and he should then prepare his final report and make it available to interested parties in the same way that he would any other report.

Although I do not have any authoritative statistics to corroborate this fact, I nevertheless would state that the incidence of medical malpractice lawsuits is probably about the same in areas with good, long-established medical examiner offices as it is in those jurisdictions that have only recently acquired a medical examiner system or that have inferior medical-legal investigative systems. By this I mean to say that I do not believe that a medical examiner system is a solution to the growing problem of medical malpractice lawsuits. However, I do believe that in medical examiner jurisdictions, in any given case of alleged professional negligence, there is a much better chance that justice will prevail, whether it proves to be of benefit to the defendant-doctor or the injured plaintiff. Competent, scientific, and unbiased investigation will always serve the cause of justice, in any type of medical-legal situation, be it a civil or a criminal case. This is a truth that the medical examiner must convince his fellow-physicians of in cases involving alleged medical malpractice.

II. Law Enforcement Officers

The relationship of the medical examiner to law enforcement officers can be summed up simply by stating that it should always be conducted on an impartial and professional basis, with the medical examiner remembering that even though his salary may come from the county government or from the state government, he is not in the position of being a person who must do everything within his power to obtain a confession or a conviction.

To state it candidly, the medical examiner should always keep in mind that the average law enforcement officer is not usually the most broad-minded or fair-minded individual in the world when it comes to a case of suspected crime. By the very nature of his work and often by the limitations imposed upon him through lack of specific training in his field, the policeman almost always works on the theory that a crime *has* been committed and that the suspect *is* unquestionably guilty.

The novice forensic pathologist may find himself caught up in this rather primitive way of thinking if he is not careful. It is not because of any personal feelings regarding civil liberties or due process of law that I make this point as strongly as I do, although these certainly are very important things to be considered by anyone in the field of legal medicine. However, absent these things, I make the point as strongly as I do from the professional standpoint of a forensic pathologist, for I know all too well how preconceived thoughts regarding a particular case can lead to critical errors and embarrassing moments for a medical examiner. Each case must be approached in a cold, calculating, and objective manner without thoughts regarding the guilt of a given individual as expressed by a policeman. This is true in criminal cases particularly, where a thorough medical-legal autopsy may prove that no crime was committed. I have personally been familiar with several instances and have heard of many more where competent pathologists have arrived at completely erroneous conclusions, and I refuse to believe that the mistakes were due to negligence or incompetency. In most of these cases, the invalid diagnoses and conclusions were arrived at because the forensic pathologist had been led astray by preconceived notions regarding the commission of a crime by a given individual, such thoughts having been thoroughly ingrained into his pre-

autopsy investigation by the law enforcement officers who were working on the case.

A medical examiner should, of course, be cooperative and courteous with law enforcement officers, for the job of the latter group is not an easy one. He should permit a duly authorized representative of the police department to witness an autopsy in a known or suspected murder case or in other cases in which there is known or suspected foul play. He should point out things of crucial concern which may help the officer in his investigation. The medical examiner should look to the law enforcement officer whenever possible, in hopes of obtaining as much information as possible concerning cases of sudden, suspicious, unexpected, unexplained, and violent deaths. The points that have been made above with regard to the relationship of the medical examiner with other physicians in the matter of obtaining a medical and personal history of the deceased would be applicable here. Frequently, vital information can be obtained from and through law enforcement officers, information that might not be known or available to the attending physician. The medical examiner should keep in mind the fact that law enforcement officers, even those who have been involved in homicide work for many years, know little or nothing about the technical aspects of forensic pathology and legal medicine and occasionally go off on tangents. They may feel that it is absolutely essential that an autopsy be performed at 3:00 A.M. and be insistent that it not be delayed until 8:30 A.M. that same day when the medical examiner's office usually opens for business! These are problems that the individual medical examiner must work out in a tactful and diplomatic way, according to his own medical beliefs and conscience.

One other matter should be pointed out with regard to law enforcement officers, and this concerns on-scene investigation. By law and by the logical application of sound principles of forensic pathology, the medical examiner is the one who must assume primary responsibility over the scene, including the body and all the physical evidence surrounding the body. About this there can be no question, and the medical examiner must remain firm with any law enforcement officers who may be unhappy because of what they consider to be an unnecessary delay or an exaggerated amount of attention to what seem to them to be superficial and unimportant matters. By patient explanation over the

years, a good medical examiner will develop a pleasant rapport with law enforcement officers and will find that he is able to facilitate his own job immeasurably if he acts in a courteous, cooperative, firm, and professionally authoritative manner with them.

III. Prosecuting Attorneys

Many of the things that have been said above with regard to the relationship of the medical examiner to law enforcement officers would be applicable in a discussion of the relationship of the medical examiner to prosecuting attorneys. Although hopefully the trend in recent years has been to the development of prosecuting attorneys who realize that their job primarily is to serve the community and not to run up a string of consecutive prosecutions, many district attorneys can still be found who do not believe that there is any such thing as an innocent defendant. When dealing with such prosecuting attorneys, the medical examiner must be extremely careful not to be drawn into a situation wherein he becomes an unwitting but powerful ally of a warped public officer. The way in which I always caution myself regarding this potential problem of bias is to think thusly—although the medical examiner may frequently be called as a witness for the prosecution, he is never a prosecuting witness, and he should certainly never be a persecuting witness.

The medical examiner, of course, deals almost daily with the office of the district attorney, and it is natural that he may become quite friendly with the district attorney and the members of his staff. This is to be expected. However, the well-trained forensic pathologist always keeps in mind that personal friendships, personal prejudices, and political beliefs have no part in the professional activities of a good medical-legal investigative facility. The medical examiner must remain firm with the prosecuting attorney just as he must with the law enforcement officer when it comes to cases which have been placed under his jurisdiction. If he feels that there has not been the commission of a crime as believed by the law enforcement officers and as may be believed and even desired by the prosecuting attorney, then he must clearly state these facts and stand firmly behind his position.

With regard to the transmittal of information to the prosecuting attorney, I would like to state the following points. The

medical examiner, even though he may be a lawyer by training, should not think of himself as the prosecuting attorney in the case, and he should certainly never consider himself as the judge and the jury combined into one. In cases which are somewhat equivocal, that is to say in cases in which the medical findings could be validly interpreted in more than one way, the medical examiner should state these conclusions verbally and in writing to the office of the district attorney, and he should allow the district attorney to decide for himself what legal applications will be made of the medical findings. It is not for the medical examiner to personally determine whether or not a particular statute has been violated, based upon equivocal medical facts. Examples of such cases would be where sub-lethal amounts of narcotics or other dangerous drugs are determined toxicologically following examination of body tissues or fluids, and there is some question as to the cause of death. In these cases, there may well be other legal factors that might come into play, and the application of these legal factors is a determination that rightfully must be made by the prosecuting attorney with the final decision being rendered by the judge or the jury. Another example would be an instance in which a traumatic subdural hemorrhage is present, and there is a question as to how the hemorrhage occurred. Even though the medical examiner may have a particular theory, if in all honesty there is room for another reasonable opinion, then he should state this possibility to the prosecuting attorney, and let the prosecuting attorney decide for himself which theory he will pursue.

I should like to emphasize the importance of good rapport and communications between the medical examiner's office and the district attorney's office. There should be regularly scheduled homicide conferences, in which all deaths thought to be due to criminal negligence or acts of criminal intent should be discussed prior to trial. This is no more than the application of good principles of legal medicine as employed in the civil courts, whereby the physician who is going to testify discusses the case with the attorney prior to trial. The medical examiner should state the various possibilities to the prosecuting attorney and make it clear to him that he will not allow himself to be led into any clever traps by the district attorney on direct examination any more than he would on cross-examination by defense counsel.

IV. Other Attorneys

The relationship of the medical examiner to practicing attorneys is a subject that deserves much attention, but it is not necessary to dwell on this at great length, inasmuch as this relationship flows from and is directly related to the remarks that have been made above with regard to the relationships of the medical examiner with law enforcement officers and prosecuting attorneys. It stands to reason that the fair-minded, unbiased medical examiner, who does not allow himself to be led astray by law enforcement officers or the prosecuting attorney, should behave in a similar fashion as regards defense attorneys in criminal cases, and both plaintiff and defense attorneys in civil cases. Here, perhaps as much or more than in criminal cases, it is very possible that the medical examiner will have preconceived ideas regarding civil negligence, and he may have other biases and prejudices of a political or socio-economic nature that would cause him to arrive at conclusions that are not always medically valid. A medical examiner must keep these in mind and must safeguard against them as much as he does with regard to matters concerning law enforcement officers and the district attorney.

Once again, the medical examiner must be careful not to begin to assume the functions and duties of the attorneys in the case. He must relate his medical findings to the attorneys and allow them to utilize them as they see fit.

With regard to civil cases, there is no problem concerning reports from the medical examiner's office in any jurisdiction that I know of. Typed, completed reports are available to duly authorized representatives of insurance companies, attorneys representing the estates of individuals, other attorneys representing defendants, etc., upon request and upon payment of a small secretarial fee. I might add that objective, sound reports from medical examiners' offices have played a significant role in diminishing the court congestion in several urban communities. This has come about because of the realization through the years by both plaintiff and defense attorneys in civil cases that a competent and unbiased medical examiner calls the shots as he sees them and does not allow himself to be labelled as either a plaintiff-minded or a defense-minded medical examiner. When such a reputation develops, both sides are more apt to accept the med-

ical examiner's conclusions, and this, as you would imagine, leads to far more settlements and less medical controversy than is found in those communities where a good medical examiner system is not present.

Some difference of opinion and many problems arise with regard to the availability of the medical examiner's report to defense attorneys in criminal cases. In some jurisdictions, by law, the medical examiner is not permitted to give copies of the reports to anybody but the prosecuting attorney in criminal cases. In other jurisdictions, the statutory language is silent with regard to this matter, while in a smaller number of jurisdictions, the statutes specifically allow for the medical examiner's reports to be obtained by defense counsel.

It is my personal belief that the report of the medical examiner should be made available to defense counsel in all criminal cases, including homicides. The defense counsel cannot be expected to furnish his own medical examiner, toxicologist, chemist, and other facilities and personnel for the purpose of accumulating all of the data that the medical examiner's office has accumulated in investigating a particular death. First, defense counsel is usually not brought into the case immediately following the murder and thus has no opportunity to be present at the autopsy or to have a representative pathologist present at the autopsy. Secondly, it is not feasible for him to have the body exhumed and to have a repeat autopsy performed because of various financial problems and legal complications. Thirdly, even if an exhumation is permissible and financially feasible, in many cases a repeat autopsy will not be of any help inasmuch as the significant findings will have been altered or eradicated by the medical examiner at the first autopsy. I should point out that such alteration is not done with malice but is made necessary by the type of study required to determine the cause and manner of death.

To sum up with regard to the relationship of the medical examiner to other attorneys, I would submit that he should conduct himself in the same manner essentially as he does to the practicing physicians in the community. In some instances, the medical examiner, like many other physicians, will think that attorneys are not as ethical, proper, or professionally noble as are physicians, although I personally believe that a much smaller

percentage of medical examiners feel this way than do other members of the medical community. The medical examiner, therefore, should be patient, courteous, understanding, and sympathetic to the needs and problems of the practicing attorney, and should strive to be of assistance whenever he can within the realm of professional integrity and honesty. Once again, the role of the medical examiner can be made much easier if he has a good working relationship with the practicing attorneys in his community, and he will be a much more respected and valuable figure in the overall administration of justice if he has the respect of the practicing attorneys in his community.

V. Other Individuals and Groups

One could go on to great lengths in discussing the relationships of the medical examiner to numerous other individuals and organizations in the community, such as judges, nurses, druggists, other scientists, but I believe that it is not necessary to do so, inasmuch as most if not all of the principles that would be applicable to a discussion of the relationships of the medical examiner with all these people have already been set forth above in the discussion of his relationships to law enforcement officers, physicians, prosecuting attorneys, and other attorneys. In essence, the medical examiner should strive to be of assistance to all of these individuals and should act in a polite, patient, and professional manner whenever called upon by any of them.

VI. Education and Research

One other area should be stressed, and that is the area of education and research. The medical examiner must play a vital role in the education of medical students and law students and in post-graduate programs for practicing attorneys and physicians. By virtue of the activities of his office, the medical examiner will have all of the pathological materials that have been made available by investigation and autopsies in cases of sudden, violent, suspicious, unexpected, and unexplained deaths. In many kinds of injuries, no other teaching materials will be available in the community except those that can be found at the medical examiner's office. All these must be made available to second year medical students in pathology, and for review by third and

fourth year medical students, interns and residents, and practicing physicians.

The medical examiner should be active in teaching programs and should strive to affiliate himself with the local medical and law schools in his community. He should agree to plan and organize programs in legal medicine and medical jurisprudence for undergraduate students and for practicing attorneys and physicians on a postgraduate level. These educational programs should include time spent by all these people at the office of the medical examiner, not only witnessing autopsies, but also learning more about the facilities and equipment that are available to the medical examiner and utilized by him in his daily work. This will not only allow for the development of a better understanding on the part of the doctors and attorneys as to what the medical examiner's office is all about, but it would also enable these people to obtain much specific knowledge that will be invaluable to them in their later professional lives.

Additionally, the medical examiner should engage actively in teaching programs for law enforcement officers and for paramedical groups who should know more about specific problems dealing with various aspects of legal medicine. These people have no other place to turn, and it is not fair to them or to the community which they serve if they have not been exposed to a good medical examiner's office where they are able to learn more about the principles of forensic pathology and forensic medicine generally.

With regard to research projects, the medical examiner should be willing and anxious to engage in several research projects with local universities, industries, and local and federal government agencies. Once again, as has been mentioned above with regard to teaching programs and availability of materials, the same thing is true here. Many kinds of cases and vital research materials will not be available anywhere else in the community other than at the medical examiner's office. It is absolutely essential, therefore, that the medical examiner make available to interested agencies, materials and equipment that are present in his medical-legal investigative facility. The medical examiner should cooperate closely with these people and whenever feasible and professionally possible, work along with them to the ultimate end that the community will be better served.

Conclusions

What I have attempted to set forth in this discussion is some idea of what a medical examiner is, what he does, and what his relationships to various segments of the community should be. We all know and feel strongly about how important legal medicine is to our civilization, and indeed many countries and many civilizations back through the centuries (ante-dating the Year One) have realized the importance of legal medicine. Without the application of law to medicine and medicine to law, there cannot be a good, sound community. Without health, there cannot be a strong community. Without justice, there cannot be a decent community. Together, health and justice will play a vital role in making any country great. This we have had for the most part in the United States of America, and I think that it would not be presumptuous of me to state that to some significant measure, the people who have labored long and hard and who have devoted their lives to legal medicine have played an important role in bringing this about.

The forensic pathologist, who has functioned as a medical examiner in the United States (dating back to the earliest such system in our country in Boston around 1875), has been a highly valuable member of the over-all group of people involved in the field of legal medicine. Consequently, he can with understandable pride realize that his job, although frequently not fully understood or appreciated, is one of the most important ones in any metropolitan community anywhere in the world. In order for that job to be served in the best and fullest sense, it is necessary that the medical examiner have the best possible relationships with physicians, attorneys, and law enforcement officers in the community generally. This I believe the medical examiners in the United States have had in large measure throughout the years, and I sincerely believe that such good relationships will continue to exist in the years to come.