

THE ROLE OF THE PATHOLOGIST IN HOMICIDE INVESTIGATIONS AND CORONIAL INQUIRIES

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IN ORDER TO EXAMINE THE ROLE OF THE PATHOLOGIST IN THE CORONIAL inquiry, it is necessary to make some attempt to determine what forensic pathology is. The *Report of the Committee on Death Certification and Coroners* (Great Britain 1971) distinguished between clinical pathologists and the smaller band of forensic pathologists who are specially experienced to help in the investigation of murder and other serious crimes against the person.

According to the evidence received the basis of forensic pathology is the small amount of work which, although it is carried out on behalf of the coroner, is particularly the concern of the police . . . Every police force needs to be able to call on the services of a specially experienced pathologist to help in the investigation of murder and other serious crimes against the person. Ideally, this person should be a pathologist with a sound training in morbid anatomy who has added to this general knowledge some additional skills, most notably the ability to detect, and give authoritative testimony about, unusual features of a dead body and the surrounding circumstances which may well be of evidential value. He should be able to command the facilities of a well-equipped pathological laboratory, be readily available on call to police and courts, and be prepared to travel on short notice anywhere in the area which he serves (Great Britain. Committee on Death Certification and Coroners 1971, Cmnd. 4810 [22.18])

In April 1989, the Home Office in Great Britain published its *Report of the Working Party on Forensic Pathology*. In paragraph 1.1 the report stated:

Forensic Pathologists play a vital role in the Criminal Justice system. Strictly speaking, their responsibility is simply to undertake the post

mortem examination of bodies found in 'suspicious circumstances' in order to establish, as far as possible, the cause of death. ('Suspicious circumstances' are those in which there is suspicion of murder, manslaughter or infanticide.). In practice, however, it is often their professional judgement which determines whether a particular death is dealt with by the coroner by inquest as one due to accident, natural causes or suicide, or is investigated by the police as a preliminary to a criminal trial. To this extent theirs is the first step towards bringing to justice those responsible for the most serious crimes in our society (Great Britain 1989).

Clearly the specialist forensic pathologist has a screening role with regard to the apparently non-suspicious coronial autopsy. It is by no means rare for a specialist forensic pathologist to identify suspicious features in an otherwise non-suspicious death and to alert the investigating authorities to the fact that this particular death requires more detailed and specialised investigation by the coroner, police or other relevant agency. The experience of the full-time Forensic Pathologist—being based in clinical pathology, but with a wider and more varied case type with respect to traumatic death—is far better placed to take on the role of medico-legal watchdog. Indeed, were it not for this expertise, many largely legal coroners jurisdictions would lack the knowledge-base to maintain an effective screening system for suspicious deaths.

It follows that the organisation and administration of an efficient coronial autopsy service is greatly aided by its ability to call on a small, defined group of medical specialists in forensic pathology who are available for consultation 24-hours a day, 365 days a year.

The coronial system in Victoria is involved in a very close professional working relationship with its primary medical service provider—the Victorian Institute of Forensic Pathology. Each organisation has their own practices and procedures, which include both a combined response to the investigation of natural and unnatural hazards in the community, and an individual investigative role into deaths based on their respective skills and expertise.

Australia

The geography of Australia—with its population concentration around the major coastal cities and a smaller rural population distributed over vast inland areas of the continent—presents problems in the legal and medical administration of a coronial death investigation that the parent coroner's system in England and Wales would find difficult to appreciate. It is for this reason that we find full-time coroners in many of the major metropolitan centres and part-time coroners often linked with the magistracy in rural inland areas.

These same factors apply also to the forensic pathology service where, in the majority of the major metropolitan centres, full-time forensic pathologists are to be found. Conversely in the rural, sparsely populated inland areas, general practitioners and clinical pathologists provide the coroner with an autopsy service in association with full-time forensic pathologists who are called in on selected cases. The Royal Commissioner into Aboriginal Deaths in Custody

raised the issue of coroner's investigations where the autopsy was performed by a general medical practitioner with no formal pathology training or qualification.

It is unfair to expect that general practitioners are qualified to produce reliable results (Muirhead in Australia 1988).

Indeed the Royal College of Pathologists of Australasia made their view clear to the Royal Commission when they stated that an autopsy should only be performed by a pathologist (or a medical practitioner under the supervision of a pathologist) and that, where the case was a homicide or suspicious death (including a death in custody), the autopsy should be performed by a forensic pathologist. Whilst this position remains the goal to strive for, both the medical and legal professions have recognised that the Australian geography causes severe service problems and places a substantial burden on investigative agencies and the relatively few trained specialists in forensic pathology.

In Victoria the vast majority of coroner's cases—whether suspicious or non-suspicious—are performed by full-time specialist forensic pathologists or their directly supervised trainees working from a purpose-built modern mortuary and laboratory facility.

There are many advantages to operating a statewide forensic pathology service from a single service point. The localisation of the required number of medical staff in the same centre provides for an increased efficiency of operation in terms of costs and ensures that each of the medical forensic specialists does not work in professional isolation. Such an establishment allows ease of professional consultation with one's peers and an opportunity to engage in research and teaching activities that ensure that the forensic pathology service providers remain up-to-date in their respective fields of expertise.

A further advantage of a centralised forensic pathology service is its ability to collect and collate data on a statewide, national and international basis in order to provide the community with research information that can lead to the prevention of avoidable deaths or to a decrease in disease specific morbidity and mortality. There are of course some disadvantages for such a centralised and, some would say, 'inbred' system, and these have been recognised in some of the investigations of the coronial and forensic pathology service in the United Kingdom. Such a centralised forensic pathology service has the potential to develop inbred ideas and idiosyncrasies with respect to medical opinions and service provision. It is vital, therefore, that such a central forensic pathology service be permitted to engage in forensic pathology work at an interstate and international level for agencies other than the Crown and also to take part in the international research meetings in the areas of forensic pathology and forensic science in order that the staff are fully aware of trends and new developments in their field of expertise.

Perhaps one of the most important features of any forensic pathology service is that not only should it be independent but that it should be clearly seen by the public to be independent from any organisation that might have an interest in the results of its operations. In particular, it should be seen as distinctly separate from all other forms of investigators including the Police, government inspectors, central and local government, and other emergency services. Its independence should be seen as being of a similar nature to that

of the courts. The *Coroners Act 1985* (Vic.) makes provision for this in that it establishes a Forensic Pathology Institute as a distinct body corporate with its own governing council including representatives of the relevant Royal Colleges, the Law Department, the judiciary and the local medical schools. The Council also includes the Coroner who has a particular interest in the Pathology Institute which provides him with his major medical input during an investigation. The Act also establishes that the Director of the Institute shall be the person who holds the Chair of Forensic Medicine at Monash University and this provides the academic link between the University system and the service work of the Forensic Pathology Institute.

Training

Both the Royal College of Pathologists of Australasia and the Royal College of Pathologists of the United Kingdom recognise forensic pathology as a sub-specialty of anatomical pathology and provide for membership and fellowship examinations in this sub-specialty. However, despite this recognition by the Royal Colleges, central coordination of training in both the United Kingdom and Australia has been either limited or nonexistent.

In Victoria, the trainee aspect for forensic pathology is covered by Section 64. (2) of the *Coroners Act 1985* (Vic.):

The objects of the Institute are as follows:

- a. To promote, provide and assist in the postgraduate instruction and training of trainee specialist pathologists in the field of forensic pathology in Victoria;
- b. To promote, provide and assist in the post graduate instruction and training of persons qualified in biological sciences in the fields of toxicological and forensic science in Victoria;
- c. To provide training facilities for doctors, medical undergraduates and such other persons as may be considered appropriate by the Council to assist in the proper functioning of the Institute;
- d. To conduct research in the fields of forensic pathology, forensic science and associated fields as approved by the Council.

It can be seen that the training of forensic pathologists has now been recognised as requiring some degree of centralisation and uniformity. This has been achieved by the professional bodies examining pathologists in various jurisdictions and by governments who recognise the need for appropriately qualified specialists in this area.

It is important to remember that, whilst the examination and training periods in forensic pathology are now well-established, no centralised core of organised training program exists within the majority of states in Australia or, in fact, in the United Kingdom. It is up to candidates to obtain individual training posts throughout their training period in order to gain the experience that will enable them to pass the necessary professional examinations. Victoria has gone some way along the process of establishing a centralised

training scheme with the provision of formal training posts in forensic pathology based at the Victorian Institute of Forensic Pathology

Legal

Perhaps the greatest difficulty medical practitioners have in becoming involved with a legal system and work with the courts and legal profession is coming to terms with legal principles. Few fundamental legal principles are taught in either undergraduate or postgraduate medical education. However, it is clear from teaching forensic pathology and forensic medicine and observing the experience and skills of newly qualified forensic pathologists that an understanding of basic fundamental legal principles goes a long way to improving the service these medical professionals provide to the legal system.

Perhaps the hardest of the legal principles to come to terms with is that relating to the legal investigation process which differs both in structure and philosophy from the scientific investigation process. For the forensic practitioner, the ability to comprehend the nature of the legal investigation process and the practitioner's role within it—both prior to and during a judicial hearing—is essential for them to effectively play their part in a judicial process.

Forensic practitioners in their routine casework have really only one form of output that emerges from the work they do. This output is the act of communication of fact and opinion to a judicial or quasi-judicial body. A failure of communication will effectively negate scientific work whatever its level of technical excellence.

Medical Detective

The overall role in day-to-day function of a forensic medical service is intricately bound to the client organisations for which it provides services. In the case of the Victorian Institute of Forensic Pathology and most other forensic pathology services, these client organisations include the state Coroner's and state Government Departments. The departments include the Law or Attorney-General's Department, the Department of Health, the Department of Labour and others including emergency services such as the Police, the Ambulance Service, the Fire Brigades and the State Emergency Services. Most forensic pathology services are also involved with both education and research and, in addition, have a close working relationship with the officials and organisations within the criminal justice system.

The pathologist, in acting as an investigatory agent for the coroner, plays a far wider role than just the provider of an autopsy report. The pathologist's involvement in both death scene examination, dead body examination, and aspects of forensic science means that they form part of an investigation team in which their expertise is that of a medical detective. This is the role that is so often glorified in the media. Despite this media portrayal of the forensic pathologist as a high-profile medical sleuth, the reality is that the forensic pathologist takes his place on an equal basis with all other specialist investigators in the team assisting the coroner in his investigation.

The Diffuse Disaster Syndrome

The concept of the Diffuse Disaster Syndrome has been one that this author has been exploring for several years now. It is based on the author's experience of how society perceives death and injuries in different circumstances. Put simply, society recognises and responds actively to injuries, deaths and hazards in our community that present as mass disasters involving large loss of life and multiple injuries.

What separates the diffuse disaster from the mass disaster is its temporal and spatial distribution with deaths and injuries taking place as isolated events that are not easily recognised as being related. In the case of a mass disaster, the public and political demands for explanation, and action leads to detailed analysis of the causes of the disaster and proposals and implementation of the means to reduce the hazard. In a diffuse disaster, such social and political pressures are reduced or again applied only diffusely, resulting in a lack of effective coordinated hazard mitigation.

The diffuse disaster can be seen in a far wider range of circumstances than just traumatic injury and death. Simple medical conditions causing death every day, all around the world, year after year may amount to a diffuse epidemic involving hundreds of thousands of individuals over time and yet, because these deaths occur singly and as isolated events in any one community, they are not necessarily perceived as a major medical problem. It is only by bringing these cases together that the impact of such deaths on our community can be fully appreciated and the resources needed to research the mechanisms that result in these deaths be appropriately addressed.

Both the legal profession and the medical profession have at their roots a work practice that is related to the individual handling of matters on a case-by-case basis, dealing with each case as an isolated event. Over the years, however, the medical profession has reaped the benefits—in terms of research and understanding as to the basis of disease—by the analysis of groups of cases that show similar features. Not only does such grouping lead to increased understanding of disease processes and therapeutics, but it increases the efficiency in which medical professionals can undertake their work. Such an analysis of groups or collections of like cases is rare within coroners' systems. Yet, if those defects in society that result in death are to yield lessons, we need to be continually reminded of the risks and dangers around us. Similarly, those who have the responsibility and power to make our society safer need to have accurate information regarding these risks in order to address the relevant issues.

On a random case-by-case basis it is extremely difficult for a coroner's system to identify potentially significant fatal hazards in our society. At the same time, coroners and their supporting investigators are in a unique position of having access to a wide body of information relating to such deaths and the means to make public the issues and factors that have contributed to the death. There are many coroners, clinicians and pathologists who see this educational and preventative role of the coroners' service as one of its most important goals.

References

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