



Jurisprudence Section – 2011

E14 Civil and Criminal Defense Trial Attorneys: Relevant Issues and Relationships With Forensic Pathologists

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After attending this presentation, attendees will learn how to relate to coroners, medical examiners, and forensic pathologists in preparing for trials in which autopsy and other pathological findings are critical in understanding and effectively representing their clients.

This presentation will impact the forensic science community by encouraging and informing trial attorneys how to be more diligent and aggressive in their efforts to obtain critically important information from appropriate medical consultants prior to trial. Failure to utilize appropriate medical experts – in particular, forensic pathologists in death and serious injury cases – will often lead to disastrous results.

In handling civil cases (e.g., personal injury, product liability, wrongful death, medical malpractice) and criminal cases (e.g., homicide, drug deaths, rape/sexual assault, physical abuse), the trial attorney needs to fully understand the nature and extent of the relevant issues pertaining to anatomic, physiological, clinical, and pathological aspects of the disease processes or traumatic injuries sustained by the plaintiff (civil) or the victim (criminal).

In order to acquire and fully comprehend this fundamental and frequently critical information, the attorney needs to seek input from appropriate medical experts. Certainly, in death cases, such consultations should always include a pathologist. In criminal cases, this should be a forensic pathologist.

While most experienced, competent plaintiff trial attorneys pursuing a civil claim appreciate this point, and usually reach out to identify such specialists, meet with them, and utilize their expertise in depositions and trials—many criminal defense attorneys fail to do so. Understandably, the major problem is financial. The vast percentage of criminal defendants is unable to pay for such experts. Many times, public defenders, court-appointed attorneys, and occasionally even privately-retained attorneys simply fail to properly grasp the importance and necessity of utilizing such consultants. Public defenders and court-appointed defense attorneys should be extremely aggressive in requesting court approval for such consultations, with reasonable allowances for payment.

A very serious procedural deficiency among criminal defense attorneys is the failure to request a meeting with the coroner, medical examiner, or forensic pathologist who performed the autopsy in order to properly prepare for that individual's testimony. Medical examiner's and coroners are not (and definitely should not be permitted to perceive themselves as) an integral part of the prosecution team. Official governmental medical-legal investigative offices should be independent operations, whose diagnoses and opinions are based upon objective forensic scientific findings, and not tailored in any way to comply with the theories and decisions made by law enforcement officers and prosecutors. Therefore, the autopsy prosector should be willing to meet with a defense attorney and convey his findings and opinions in the same fashion that he would to the prosecuting attorney.

These points will be expanded upon and illustrated by references to and discussions about several prominent cases.

Forensic Pathology, Trial Preparation, Expert Testimony