CHAPTER

16

Communication

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All our work, our whole life is a matter of semantics, because words are the tools with which we work, the material out of which laws are made, out of which the constitution was written. Everything depends on our understanding of them. ***-Hon. Felix Frankfurter, US Supreme Court***

Overview

We are in the business of communication and every word matters. At the center of a successful forensic pathology practice reside deliberate and finely honed communication skills. These skills include a mastery and conveyance of complex medical and scientific concepts, both written and verbal, to varied audiences, a reasonable familiarization with legal terminology as it pertains to forensic practice, the patience and willingness to teach both medical and nonmedical people one on one and in public forums, and a deftness in meeting the many raw iterations of grief and loss with compassion, equanimity, authenticity, and reflective listening. All of this must be balanced with the ability to provide the comfort of medical and scientific knowledge with the sensitive delivery of helpful and accurate information. Together and ideally, this skill set will produce clarity without condescension, while offering both honesty and neutrality. At its most elemental, however, it requires forensic pathologists to apply a degree of basic humanity to all that they do and say.

The reality of forensic practice is that our specific word choices in written communications are often consequential. At the crossroads of medicine and law, forensic pathologists must say what they mean and both know and mean what they say more than in nearly any other medical specialty. That said, despite our best intentions and responsible efforts, any word we utter or pen can and often will be dissected and not infrequently misunderstood, taken out of context, misused, or even weaponized, all outcomes ultimately beyond our control.

Still, as professionals, forensic pathologists are of limited use to anyone if they are unable to effectively communicate the data and opinions they have so assiduously gathered and formed. Our "audiences" are broad and varied, so our communications must be nimble enough to be specifically tailored to the needs and forensic aptitudes of each. These audiences include, but are not limited to, families and friends of the deceased, lawyers, jurors, clinicians, law enforcement, child and adult protective service workers, public health officials, myriad governmental officials, insurance claims adjusters, the media, medical students, residents, fellows, and the public at large. All benefit from the timely, accurate, and clear delivery of information surrounding highly complex and sometimes emotionally charged forensic matters. Similarly, the forensic pathologist often benefits greatly from detailed and accurate information communicated *in return* from direct, one-on-one conversations with law enforcement, physicians, public health officials, and the bereaved.

To that end, before doing anything else, the forensic pathology neophyte would be well advised to read Lester Adelson's *The Forensic Pathologist: "Family Physician" to the Bereaved*, published in JAMA in 1977, as applicable and timeless today as it was when it was written.[1] Immediately following that, they would move on to Charles Hirsch's *Talking to the Family After an Autopsy*.[2] Not only are each of these exquisitely written, broadly informative in defining the unique role of the forensic pathologist, and infinitely helpful in practice, they also prepare the reader, more than any other treatises, for what they will realistically encounter on a day to day basis as a professional in this field, allowing the novice to make a clear-eyed career choice, with no illusions. A perusal of these manuscripts will

https://doi.org/10.1016/B978-0-323-91796-4.00021-0

either ignite a calling or have the reader turning to another profession. While the nobility of this profession is clearly conveyed in each, so is the fact that the practice of forensic pathology is not for the faint of heart, nor the emotionally imperceptive.

To wit, Dr. Adelson said the following,

> The queries put to the pathologist range widely. Based as they are on many complex combinations of grief, knowledge, guilt, ignorance, anger, animosity, avarice, and other personality traits of the profoundly disturbed questioners …. A straightforward question deserves a straightforward reply, even if it is only, 'I can't give you a good answer about that aspect of the death'. Under no circumstances should the postmortem family physician resort to untruths or half-truths. The best that he can do is to be gentle and circumspect in how he communicates unpleasant and disturbing information to his interrogator. Tact, compassion, patience, probity, sympathy, and even a little empathy are essential elements.[1]

Dr. Hirsch continued,

> Sensitized by a recognition of the pervasive guilt principle …. First and foremost, do not push. Most persons want to talk with a physician about the death of a loved one and will do so if provided an opportunity. However, not all persons are woven from the same emotional fabric, and some survivors do not want to talk about the death, at least not right away …. Sometimes, the survivors even wait for the anniversary of the death to ask questions about the autopsy findings, cause of death, and technical terms on the death certificate …. 'Doctor, I just couldn't talk about it until now'.[2]

The observations of Drs. Adelson and Hirsch represent the wholly realistic experiences of most practicing forensic pathologists today, as well as the sometimes surprising and varied manifestations of grief that we encounter nearly daily. In the authors' experiences, some of the most frequently asked questions from family members (excluding time of death) surround concerns of terminal suffering. Did he suffer? Was it fast? Did she know she was dying? Did anyone hurt her? Could I have saved her? It is often in hearing the answers to this specific group of questions that any fragile artifice of composure they may have been able to erect falls away. The responses to these sometimes desperate questions require nuance, but honesty. While we cannot answer all questions posed to us, on many occasions, mercifully, the forensic pathologist is in the unique position of being able to truthfully and clearly answer these specific inquiries, often relieving tremendous acute suffering in the process. Depending on the words we convey, an audible and emotional sigh of relief is often the result. There is likely a considerable degree of healing that accompanies knowledge and a comprehension of the facts. It is no wonder that the importance of good communication skills, of which listening is such a vital element, is central to any discussion about successful forensic pathology practice.

It is not unusual for a decedent's family to contact the forensic pathologist months or even years after a death. This may occur because the person was not ready to hear the details or it may be due to prolonged grief. Prolonged grief disorder, also known as complicated grief or persistent complex bereavement disorder, occurs when painful emotions are so long lasting and severe that the person has trouble recovering from the loss and resuming their own life. The person may experience intense longings for the decedent or a preoccupation with thoughts of the deceased. Prolonged grief disorder was recently added to the diagnostic and statistical manual of mental disorders (DSM).[3–6]

Another arena of communication that is important to mention in any discussion focused on forensic pathology practice is ***expert testimony*** (see ahead in this chapter). While careful and thorough preparation for expert testimony is essential, the real heavy lifting and important investment occur at the time of death certification. Lining up the necessary evidence, meeting the required burden of proof to match the case, carefully considering the mechanism through sound forensic thinking, and writing a clear and accurate opinion are the bigger hurdles to overcome in facing whatever might later be encountered on the stand. These up-front steps are the ones over which the forensic pathologist has actual control. By contrast, no amount of testimony preparation will extinguish the fact that there will be an adversarial legal proceeding in which the forensic pathologist's professional opinion may be questioned and tested. It is not personal. It is not about competence. It is by design and necessity, an inherent feature of the criminal justice system that, as a civilized society, we are all a part. It is a system of advocacy. Opposing attorneys must challenge the witness whose findings may support an allegation against their client. If they didn't, they would be abdicating their legal duty. That said, one will likely have a stronger stomach for having their opinions sometimes aggressively questioned if the foundation upon which those opinions are formed is evidence-based, consistent, and lacks capriciousness from the get-go. The hard work should happen up front, not at the time of the trial. By then, it is likely too late. No mastery of testifying will eclipse an ill-conceived and flawed conclusion, unsupported by science and the evidence. While nervousness is an unavoidable experience of early testimony, the anxiety will be substantially blunted by the confidence afforded from soundly formed opinions.

As outlined in Chapter 2, medical examiner/coroner (ME/C) communications can be categorized into one of four areas: **direct conversations** (telephone and in person discussions and meetings), **expert testimony/legal proceedings**, **public speaking** (including in-house case presentations, didactic lectures, hospital morbidity and mortality conferences, multidisciplinary conferences, presentations at professional meetings, and press conferences), and **written documents** (death certificates, autopsy reports, autopsy and case notes, press releases, emails, and social media). At the center of the forensic pathologist's practice, and desk, is *the telephone*, one of the most useful tools they will use in both data gathering and grief counseling. As a corollary to the use of the telephone, written documentation of selected communications is a natural compliment. In a nod to careful documentation and long before the digital age was in full gear, Dr. Hirsch was fond of saying, "*Memorialize that conversation on paper.*"

Verbal: one-on-one communication

We solve more cases with our telephones than with our microscopes.
Information void is the mother of paranoia. ***-Dr. Charles S. Hirsch***

The below first-person narrative details the personal reflections of **Dr. Jonathan Hayes**, a senior medical examiner who has practiced forensic pathology for over 30 years. In it, he shares his substantial insights and advice born out of a wealth of experience from both his conversations with families and his role as an expert witness.

On speaking with families and to juries

Although unexpectedness may or may not affect the investigation, it will certainly affect the next of kin. A death that is unexpected adds an additional element to the emotional burden of the family. As Adelson stated: "Even under the best of circumstances, death is almost always a traumatic experience to the survivors. The emotional impact of death is magnified enormously when it occurs unexpectedly."[1] Medical personnel who interact with families at this most emotional time of their lives need to be particularly sensitive to their questions and concerns.[2,7]

We all have our own ways of speaking with people, and the way we talk to others reflects both the context of the conversation and who we are as people. Speaking with families in the throes of their terrible loss can feel particularly daunting. Most are calm and lucid, but sometimes they are so distraught they can barely breathe, so angry they can barely speak, or so intoxicated that they are incoherent. In all of these situations, our goal is the same: we want to help them understand the death of a person they cherished, and guide them as they start their arrangements.

The sheer intensity of the situation makes many of us wary; medical examiners often put off talking with families, or delegate the responsibility to another team member. It is understandable, but unfortunate: your communication with the family builds a two-way bridge and will help you to manage your case better and to handle any curveballs that may arise down the line. Speaking to families is not just a responsibility, it's an opportunity and a privilege.

There is no one way to talk with people. My way of speaking with families will be different from yours, but I wanted to discuss some approaches that I have found helpful. What follows is a personal account of how I approach families; you should feel free to take what you like and reject what you do not as you build your skills in this sometimes uncomfortable arena. You will probably feel awkward at first, but with experience, you will find it easier to understand what people need from you, and how to say it to them in your own voice.

I would note that the manner in which you speak with the family is almost as important as the information you provide. Medical examiners often approach these conversations very gingerly, wary of awkwardness, worrying the family might get upset and start crying, or become enraged and start yelling. Bracing for that, we sometimes wrap ourselves in the cloak of our profession, stepping into the persona of the Doctor talking to the Patient, trying to avoid getting ensnarled in tricky emotions. Leaning on the distance of professionalism is not the best way to manage this interaction. It fosters a separation between you and the family member, and, even worse, a separation based on a hierarchy. Hiding behind your authority is a natural self-defense mechanism, but at the end of the day, it is helpful neither for you nor the family, as it is a less effective way of communicating and preparing them for the hard days that will follow. Instead of being a Doctor talking to a Patient, just be one human being talking to another. This is a moment to take off the white coat and embrace your own vulnerability. To make yourself truly available to a stranger who is suffering cruelly takes some courage, but it is the best way to work through this discussion, for both of you. It is a kindness that represents our profession at its best.

Newer forensic pathologists will feel that emotional pressure more intensely than veterans. As you dial the phone number or reach for the door handle of the Family Room, all of your insecurities—acute self-consciousness of your

lack of experience, the sense that you are an impostor being sent out to handle a task that would be better handled by someone who actually *knows* what they're doing—may swell inside you. We have all been there. Just remember: *it is not about you*. The widow is the one who is suffering, the father who just lost his son is the one in agony, and the things you are going to say to them may ease their pain.

Instead of worrying about what you will say, or if the family will immediately sense that you are a beginner (*fraud*, your internal voice might be whispering), focus on the help you can give them, the relief you can provide. Your goal is to move them through the process as quickly and as painlessly as you can. You are in a unique position not only to give information, but also to help them work toward some form of acceptance as efficiently as possible. You are going to provide answers and guide them through the logistics of what happens next. Families are desperate for help: you are the person who is there to help them.

Again, it is not about you: it is about them. Their emotional state is going to play a large part in how your conversation or meeting goes. The exact depth of their need for information will shape the discussion you have—you will find that while some families only want the simplest of outlines, others will insist on every gory detail. Luckily, the families themselves will tell you what they need. The problem is, though they will tell you, they often do not say it explicitly with words, but through intonation, cadence, and silences. The only way you are going to understand what they need is if you really pay attention to what they say and how they are saying it. So, to be good at speaking with families, first and foremost, you have to be a good listener. Under these circumstances, active listening can be challenging, particularly when you are talking on the phone and are deprived of the visual cues we unconsciously rely upon when interacting with another person. What is more, there is often a language or cultural barrier; you may be talking with someone through an interpreter, every sentence in both directions mediated by a second party, unable to judge the intonations and actual words being shared. Just do your best to listen carefully to what they are saying. Occasionally repeating something they have just said to you can be a good way to clarify their meaning, but also shows them that you are listening carefully, and affirms that the things they have to say are important to you. For many people, speaking with a physician is intimidating. Indeed, I've met physicians who enjoy that little squirt of "power"—be that way at your peril. Accepting that not all conversations are going to go perfectly is helpful. Sometimes you will make blunders—an old colleague tells the story of how, speaking to a family whose son had hanged himself, somehow could not stop himself from repeatedly using the word "hang" in their conversation. "I don't want to keep you hanging around here," "hang on for a moment". I suspect that the discomfort was more acute for him than for the family. Just remember that you have information they want and need, they have information you want and need, and you will both do your best to contribute.

To get the best result from your interaction, it is important to go into the exchange focused on your desired outcome. Before dialing the number or walking into the meeting, ask yourself what you want to get from the conversation. Every discussion with the family is a two-way street, as much an opportunity to get information as to provide it. Before you speak with a family, make sure you know the case cold. Review the circumstantial information, the scene, the autopsy findings, and any available lab studies. Ask yourself what you need to finalize the report, and anticipate questions they might ask. Remember, families are usually eager to help to make a real contribution in sorting out what happened to the person they have lost. So, what is the first thing you say to someone who is grieving? What do you say to a man who has just lost his wife? It's a situation where we often feel the need to protect ourselves from their overwhelming anguish. We may slip into a sort of Death Response Theater, go through an empty ritual of saying what we think people expect us to say. I have strong opinions about this, and you may completely disagree, but for me, the worst to say to someone is the trite, "*I'm sorry for your loss*." Have you ever spent time with someone who has just lost someone they loved? Almost every single person who approaches says the same thing: "Sorry for your loss." They hear it from the emergency medical technician (EMT) standing next to the body on the living room floor. Then the patrol officers. The detectives. Then neighbors, and friends. Then on social media. The same rote expression over and over again, from each friend or colleague or acquaintance seeing them for the first time since the death. What is more, when someone expresses their condolences, there is a social obligation to respond, to thank them from their expressions of concern. Saying "I'm sorry for your loss" makes a demand on the recipient for a reply. So, I never say that. Indeed, I have never said it. Instead, I focus on moving them through our interaction. They *know* you are the medical examiner, and what your role is in the miserable logistics of the death of their spouse. And every person, even in the depths of their grief, *knows* people feel badly for them for what they are going through—you really do not have to say it.

So, I do not. I introduce myself, and say, "My name is Dr. Hayes, and I'm with the Medical Examiner's Office. Do you have a few minutes to speak with me?" When they agree, I say, "I'm going to try and move you through this as quickly as I can. Do you mind if I ask you a few questions?" They always agree—again, they want to help. Being

useful provides a concrete satisfaction to them, and for a few minutes at least, shifts the focus of their attention from their grief to understanding what happened.

I start the conversation by asking them what I want to know. I listen actively to their answers, and as I listen, I assess the person or people with whom I am speaking. I listen not just to what they are saying, but to how they are saying it, to the language and the tone of their speech. I try to gently gauge how upset they are, and to see how nuanced they are in their understanding of what might be going on. I use their language and vocabulary as a guide to the level at which I should pitch the information that I am sharing. Again, how you listen is every bit as important as how you express yourself.

Be wary of talking down to families. The gap in language, culture, education, and mood can be extreme, but it is still your responsibility to make sure that they understand what you are saying. When I first start talking, I speak as I would if I were speaking with a bright high schooler; if they are following me, fine, but if I sense that they are having problems understanding, I'll slow things down a bit until I know they are with me. Sometimes, the man or woman with whom you are speaking may be wrecked by anguish or alcohol, and may not be thinking as clearly as they do normally.

In your conversation, avoid medical terms, particularly abbreviations. Physicians have a tendency to throw out terms like PE or MI as if they were tossing beads from a Mardi Gras float—after all, they are the terms we use with other doctors to communicate quickly and efficiently, and we know precisely what we mean when we use them. But at another level, I think we sometimes use them because it makes us sound more authoritative, like we really know what we are talking about. Instead of ladling out medical alphabet soup, explain what happened simply and accessibly—"Because of the ankle fracture, he wasn't moving around very much. This made the blood flow through his legs slower, and eventually he developed a blood clot deep in his calf—that's why he was saying his leg hurt. And then the clot broke off and went to his lungs, and then his heart could no longer pump blood to the lungs, and he died. This is called a 'pulmonary embolism', when the clot breaks off and goes to the lung. And the clot in the leg is called a 'deep vein thrombosis'. So, on the death certificate, I'm going to say the cause of death was a "pulmonary embolism due to deep vein thrombosis in the leg due to immobilization following his ankle fracture." I will then ask if they understand what I am saying. Checking repeatedly that they are grasping what you're talking about helps cut down on follow-up calls, but remember: they are receiving important information at a time when they're stunned, and may not process it well, and may retain it very poorly. What is more, families will sometimes seize upon individual elements in what you are saying, and gradually manipulate their recollection until it fits with what they would prefer to be the truth. So occasionally I will get a call a week after the autopsy demanding the toxicology results, swearing I told them it would be ready next week. When that happens, I will always apologize for the misunderstanding, and explain how long those results will realistically take to come back. Even when you know you are right, it is both kindest and most efficient to apologize, offer the correction, and say you will call back to follow up when you have the results. And remember: anatomic terms are jargon! Consider using "Adam's apple" over "larynx," "windpipe" over "trachea," et cetera. And if you do use a technical term like "aorta," immediately clarify it by adding something like "That's the large artery that carries blood from the heart through to the rest of the body." The fact is, every autopsy finding, every cause of death, no matter how complex, can be simplified and explained. Sometimes that explanation may be lengthy, but it can always be explained—typically, the person with whom you are speaking will signal the level of detail they want. If a family member is clearly unable to follow along with an involved exegesis of the pathophysiology, sometimes I'll default to a shortcut, and distill it down to its essence—"he had a massive heart attack," perhaps, or "he had a stroke." The endless, quasi-Talmudic debates forensic pathologists get into over wording of the cause of death statement are rarely of major concern to families.

If a widow, on the other hand, shows an easy familiarity with her husband's medical history and prescriptions, I'll say something like, "You seem to know his health problems very well—are you in the medical field?" This is useful to know going in, as someone with medical training will quickly understand situations where lay people will need careful guidance—it is far faster to say "I think he had a fatal arrhythmia due to cardiac hypertrophy from his hypertension" than to explain the mechanism and underlying pathophysiology of an arrhythmic death to someone completely unversed in medicine. Furthermore, their familiarity with medical knowledge can streamline the conversation, and they may even direct the questions you ask when looking for more detail about the circumstances of death. At this point, I will step back for a second and note that in my experience, the first response a family member has to the death of a loved one is almost always guilt, no matter the cause of death, no matter how illogical it might seem to you. "I should've made him stop smoking!" or "I should've made him lose weight!" or "If I hadn't asked him to pick up a soda at the bodega, he'd still be alive."[2]

This guilt can be unbearable and can turn quickly into denial and anger. Nowhere is this truer than with suicides, where the family member may suddenly see themselves as having stood by doing nothing while someone they

loved was suffering intensely right in front of them, suffering so badly that they chose to kill themselves rather than continue in agony. The tendency toward self-blame may be intense and can flip over into the most extreme anger and steadfast refusal to consider the possibility of suicide.[8]

In those circumstances, hear the anger, listen to the resistance and, where you can, avoid engaging in that battle, particularly in the period shortly after death. What I will do is say, "Well, I'm doing some further tests—I need to see if she was intoxicated at the time of her death, so I'm doing some routine testing to see if she had drugs or alcohol in her system. What I'm going to do for now is issue a temporary death certificate, which will give the cause of death as 'Pending Further Study'. When I have those test results, and the investigation is finished, I'll give you a call and we can discuss it then. I promise you I'm not leaping to any conclusions at this early stage, but I have to tell you that I do think there's a real possibility that she took her own life."

Even though they may adamantly deny that possibility, you have planted the seed. Over the following weeks, they will have time to reflect on it, and they may hear relevant stories from other family members or friends about how the decedent had been behaving strangely in the weeks before their death; it has been my experience that, over time, even the most resistant family members will likely come around to accepting a death as a suicide. After I have gotten the information I need, I thank them for their help, and then say something like, "Now, how can I help you?" and give them time to ask their questions, and answer as fully as I am able to—which might be limited both by the stage of the investigation or, in criminal cases, the office's practices about what information can be appropriately released.

I know what they want to know, but I let them ask, because I think it returns some control back to them. Their questions are fairly predictable, but sometimes the biggest question of all in a sudden death is hard for them to articulate directly. So, when I begin talking about my findings, I'll typically start off with, "First off, there was no foul play, no injuries. No one hurt her." That sentence can provide an immediate rush of relief, particularly where the decedent was estranged from his family, or when the family lives far away and is unfamiliar with the decedent's distant life.

Having said that I have ruled out foul play, I then move on to say what I *did* find. I'll talk first about any disease process I found, even if I suspect a drug intoxication death. "Now, he had some heart enlargement and scarring of the kidneys; we see these when people have high blood pressure. And as the heart becomes enlarged, it becomes weakened and electrically unstable—it can fail at any time." If I believe the death is an intoxication, I'll then gently segue into that by directly asking if they are aware of any alcohol or substance use. If they confirm the history, well and good, but if they do not know, or deny it, I will say something along the lines of "Well, I have to tell you that she had drugs on her bedside table" or "There were findings at the examination which make me suspect that he had been using drugs for some time." (I'm not big on euphemisms—they may soften the blow, but they also tend to obfuscate—but when talking with the family, I'll use "examination" over "autopsy." I try not to draw their attention to the more visceral aspects of the death).

I do not slam the door on explanations other than substance use at this point, but again, this is an idea I have implanted. I will say, "I didn't find any other medical cause of death, and she's young, so I think that substance use is the most likely explanation. I'm going to be doing routine testing to see if she has any drugs or alcohol in her system. If the testing comes back negative, I'll do further studies to see if I can find something else, but I have to tell you that at this point, I think it's very likely that she was using drugs."

I underplay my hand because I want to give the family time to come to the likely—or even obvious—conclusions themselves. Besides, on occasion the toxicology does, in fact, come back negative, and your investigation resets. I like to signal to them that I have not made up my mind yet, that I have not looked at the dead body of their daughter and judged her as a "drug addict." Sometimes, we have to disclose findings that are going to be very hard for a family to hear—signs of sexual assault, signs of torture, or dismemberment. Your every instinct may be to bend the truth to protect people's feelings, to sugarcoat things as much as possible; but while it is good to be sensitive and supportive, you have to communicate honestly what happened to the decedent. I have had situations where families have asked me if a man who burned to death suffered. In those cases, I've said that yes, he would have suffered, but that it was likely that he had lost consciousness quickly. Although difficult for the family to hear, this truth may turn out to have legal significance, for example, where a subsequent lawsuit is brought based on a claim of conscious pain and suffering. That said, you do not have to actively force information on a family. Listen to their wariness, and phrase things out of respect for that. And I will sometimes go with euphemisms in extreme cases—if someone in a car crash has been decapitated, I won't volunteer that (and I would never put that word on a death certificate). Instead, I will say "He sustained devastating injuries of his head and neck; he would have died instantly." That said, a decapitation is the sort of detail that some elements in the media just love, the sort of detail that has a way of being leaked. If the family were to directly ask me if he was decapitated, I would say that he was, and add that he would have died instantly; so far, a family has yet to ask me that.

Importantly, I have found that even when the truth is painful, the family is often still glad just to have that clarity, to know just what the person they loved went through. I am not sure that I truly believe in "closure," but I do believe that providing the family with the facts helps them come to terms with the death.

Finally, as noted above, sometimes the facts of the case, particularly when easily sensationalized, get out, often via the police (whether in formal press conference or in unauthorized leaks to the media). It is best that you handle informing the families yourself rather than that they hear it on the radio (similarly, if you have pended a case for further investigation, particularly a suicide, *always* alert the family before issuing the final death certificate, particularly if it's a case that has drawn media attention). Now, different offices have different policies for the timing of the release of information (see below), particularly with regard to homicides. In many jurisdictions, until a case has entered the legal system (by which I mean there has been an indictment), the information released to the families of homicide victims by the ME/C is strictly limited to what is actually written on the death certificate. It can be terribly frustrating for them, but until the case is fully investigated, we make sure we avoid potentially releasing information to the wrong person. When I explain that I cannot provide details, I apologize and tell them that as soon as the prosecutor's office authorizes it, I will be happy to discuss my findings with them at length. That said, once the body is released, the family will have access to it at the funeral home and will be able to see for themselves the condition of the body and any injuries. In some instances, you may be speaking with families who are objecting, whether for personal or religious reasons, to the autopsy you need to perform. Your response to their **objection** will very much be dictated by the policies of your jurisdiction. In some jurisdictions, families have very strong protection under the law for their religious objections: the medical examiner has to prove that there is a compelling medicolegal need for autopsy, typically either to determine or evaluate a homicide or to diagnose a potential public health issue, such as a major contagion.

You will handle their objection by balancing the public health aspect of the case with their personal or religious beliefs. If I am not firmly convinced of the importance of performing an autopsy in the case, but would prefer to do one, I will explain why it might be in the best interests of the family to have the autopsy. At the end of the day, if they persist, I will honor their objection. Furthermore, it is not my function to interpret the tenets of their faith for them, so if a Catholic family launches an objection "on religious grounds," I will treat it with the same gravity as I would if they were a practicing Muslim or Orthodox Jew. Now, if I feel an autopsy is critical, I will explain exactly why that is to the family. I find the most compelling argument is the honest one: "I need to make sure that no one hurt her." If a death is clearly a homicide, I'll say, "I'm sorry, but I need to document the injuries thoroughly so that whoever did this can be properly prosecuted. I've seen criminal cases fail because no autopsy was done, and I don't want to let her down." If I must do an autopsy, I'll do my best to make any accommodations the family might request. In Orthodox Jewish cases, I've often worked with a rabbi at my side, wiping my equipment and making sure any blood spilled stays with the body in accordance with the principles of Orthodox Jewish faith. The presence of the rabbi brings tremendous comfort to the families, and the involvement of a rabbi or imam is very common in cases of religious objection. Since they are usually not intimately involved with the decedent, they can be very helpful when managing the family's wishes and expectations; indeed, often the rabbi may be the family's primary point of contact with the ME. On occasion, I have encountered situations where an individual has killed themselves despite practicing a faith that proscribes suicide. Here, the family might be worried about being able to bury the decedent in a very restrictive religious cemetery (this concern, by the way, has been expressed to me by both Jewish and Christian families). I think that most religions have come round to viewing suicide as aberrant behavior that is the excusable product of mental illness, and few are so strict as to block a burial on the grounds of killing oneself, but in those circumstances, I have proposed waiting to issue the final certification until I have finished running the toxicology testing to determine if they were intoxicated at the time of the incident. By the time the results have returned and a final death certificate is issued, the person has long been interred—an ethical stretch for which I am able to forgive myself.

I will do my best to keep the family constantly updated with the state of the investigation, and more particularly, the stage of the body's progress through the system—there is often a religious imperative that the person be buried as quickly as possible. Sometimes the interment is to be in Israel, which adds extra pressure for rapid processing and release of the body.

I'll notify them when the procedure (another euphemism I like) is finished, when the identification has been completed, and when the body is ready for release. I will discuss the findings with them to the extent that I can, and let them know what the next stages of the investigation will involve. Keeping open lines of communication—letting the family know that you are sensitive to their needs and available for continued follow-up—is the best way to support them through what can be a nightmarishly painful ordeal.

At the end of my conversations with all families, I shift to the practicalities of handling the body. I explain when the autopsy report is likely to be ready, and how they can get a copy. I refer them to an appropriate administrator or

department who can help them get access to the decedent's dwelling and possessions if, for example, their apartment has been sealed by the police. I tell them when the body can be released, and the protocol for the release, and I make sure they have all relevant telephone numbers for handling things going forward, including mine, for follow-up questions or should they learn something that might be of use to the investigation. As to the public health aspect of what we do, I am not shy about offering counsel. If I have a 42-year-old man who has collapsed while jogging and is found to have multifocal critical coronary artery stenoses at autopsy, I will warn his family that they need to take this finding seriously. I will explain that the death of a young man from this disease raises the possibility that there is some sort of genetic predisposition to atherosclerotic cardiovascular disease. I will encourage the family to see a physician, urging them to get their blood pressure, blood sugar, cholesterol, and lipids checked. I will advise them to focus on stopping smoking, and losing weight, and any other interventions I feel relevant to the circumstances of the death at hand.

Over the course of the conversation, families may get emotional. I will stop talking to let them grieve, staying quiet while they do. Sometimes, I feel their pain deeply myself—I have wept many times while speaking with families (Indeed, I have wept in court, on the stand, while testifying in child homicides; at that point, I have turned to the judge and asked to be excused for a couple of minutes). When I do feel intensely moved, I will say something to the family—"I'm so sorry", most commonly. That said, I will *never* trot out "Sorry for your loss". Now if *you* truly feel that expression, by all means, say it. Just do not say it because it's What People Say; say it because it is how you feel in the moment. Or even better, express your condolences in your own words. Occasionally, families will become enraged and start shouting. At this point, you are unlikely to be able to either elicit or share any further useful information, so it is best to extricate yourself from the conversation, while being clear that you are leaving the door open to further communication. I will say something like, "I think it's best that we speak again at another time. You have my number; please call me when you're ready." Remember that anger can be a part of the grieving process and you should not take it personally or respond in kind. If you are meeting with a family in person, and they become enraged, be very careful. I have had a father, his face three inches from mine, screaming at me that I was accusing him of shaking his son to death; it was disconcerting, and it made it hard to stay focused. This is a good time to remember what your role in the interaction is: you are the physician charged with investigating the case. You are in control of the meeting and can terminate it at any time; obviously, now would be the time. When you leave the room after an angry exchange, it is a good idea to have security respond for support. Indeed, if you are about to enter a possibly contentious interview, it is best to bring a colleague along, ideally a senior colleague. If you do not have security in your facility and feel truly threatened, you might decide to call 911. Just remember, no matter how much rage is directed against you, this is not about you. You're speaking with someone who has just suffered a devastating loss; you have not done anything wrong, you are not incompetent, and you are only there to help them understand. Your patience is your winning card, and when you call them or meet with them again later to follow up, they are generally apologetic, even a little sheepish. In closing, I will say that in the thousands of interactions I have had with families, I have pretty much always managed to get the information I needed, and to answer the family's questions—very few indeed have gone badly. The thing is, of those thousands of conversations, I remember the details of only a handful, but I know that for those families, my words have made an impression they will remember for years to come.

The principles of communicating clearly when speaking with families are equally applicable when testifying in court or giving depositions. Of course, in the court room, you don't usually have any direct feedback to confirm the level of understanding—although you'll sometimes see heads nodding in assent at something you have just said.

Even trickier, you are talking to a broad cross section of people, who are likely to have a range of levels of understanding in what you have to say. Aiming your vocabulary at about the level of a bright high schooler, avoiding medical jargon and abbreviations, and breaking pathophysiological processes down into their simplest form remain the essential skills. If you can do that—and really, it's not too hard if you yourself understand the physiology—you will be solid on the witness stand. Besides, the mechanics of most homicides are readily understood by lay people.

Court testimony can be tricky. While conversations with families involve an earnest exchange of information, in court, attorneys may attempt to manipulate or twist your words. Resist the urge to take that personally—they're just doing their jobs. Whereas you may feel like an impostor when you're just beginning to talk to families, the defense may actively try to undermine your credibility, emphasizing to the jury just how inexperienced you were when you did the autopsy. That's fine—it's to be expected. And again, they are only doing their jobs.

Just remember: you can wipe the floor with them when it comes to forensic knowledge. Juries will not base their opinion of your abilities on the defense attorney's posturing, but on the way you communicate your knowledge of the case to them. Even if you've only done four homicide autopsies, if you explain your case clearly, they'll recognize your authority. They may even feel sympathy toward you should the defense try to harass or bully you.

Which will likely happen sooner or later. Sometimes attorneys will deliberately try to fluster you. Just relax, and answer their questions calmly. You *know* the answers. One of the common techniques they may use is to ask compound questions. Teach them quickly that asking you compound questions is a mistake: I have no hesitation in saying, "I'm sorry, I don't understand the question, counselor. Would you mind repeating it?" This is a particularly effective technique when the defense has just poured out a long-winded compound question, stacked with subordinate clauses and conditional questions and inserted hypotheticals.

I pause for a second, look puzzled, and then ask them to repeat it. At this point, **they** may become flustered—the complexity of their question was such that it is difficult to reconstitute it, and generally they'll default to asking a simpler, more direct question. Sometimes, they will try to dodge that by having the court reporter read their bloated question back in its entirety. If it's the same question, with the same problematic construction, I'll just say, "I'm really sorry, but I'm just not clear what you're asking." At that point, the judge will typically instruct the attorney to rephrase the question; the more basic question then ensues.

At the end of the day, court testimony is straightforward—all you have to do is answer the questions honestly. Have a clear sense about what you believe to be the facts of the case, and focus on explaining them to the jury in a clear and comprehensible way. I largely ignore both the prosecuting and defense attorneys. When I step up to the stand, the first thing I do is turn my chair to face the jury. I make eye contact during my testimony, shifting focus from juror to juror, again trying to see if they are following me. I glance toward the prosecutor or defense attorney for their questions, but immediately turn back to the jury, often in mid question. My focus remains on the jury: they are the people I'm talking to, no matter who is asking the questions.

Do not assume that the members of the jury think you're omniscient—they do not. They assume you'll be scrupulously honest, and if you interfere with that assumption, your testimony will be weakened. Learn to say, "I don't know" or "I don't remember," and learn to say them easily, without an agonizing delay as you decide whether or not to admit your ignorance. If you do not know something, admit it immediately.

Similarly, if the defense presents you with a hypothetical that might hurt the prosecution's case, but which you consider reasonable, give it up immediately, without trying to weasel around it. "Yes, counselor, that's possible."

It is up to the prosecutor to come back to you and say, "Doctor, you said that the defense's hypothetical theory was 'possible'. Do you have an opinion as to how **likely** it was?" Then you can answer, "When I said that it was 'possible', I meant that I couldn't rule it out, but I think that that explanation is highly improbable." And then explain why you feel that way.

Sometimes an attorney will deliberately build a hypnotic rhythm to their questions, trying to lull you into placidity. They ask simple, straightforward questions to things that are quite evidently true and with which you agree, question after question. "Isn't it true, Doctor, that …" Yes. "Is it not also true that …" Yes.

And the questions will come one after another, and you find yourself agreeing with them, developing a kind of rhythm of affirmation—it is seductively easy to be able to just answer "Yes" without conflict, without even really having to think about it. But the questions will at one point start to shift, until an affirmative answer is *mostly* true, but not 100%; the expectation is that you will let it go because you have repeatedly answered "Yes" over and over again. But once you've accepted a less than 100% clear-cut assertion, the assertions become increasingly uneven, until you've been maneuvered into agreeing with something you really do not agree with. Watch out for that incremental drift from what is reasonable to what is not.

When an attorney says, "Wouldn't you agree, Doctor, that …," be on your guard. They are using you to lay the foundation for something you might strongly disagree with. You can answer something like, "In most cases, I think that's true," giving yourself an out should more specific and inaccurate assertions be made. Use a similar approach when the attorney produces a textbook and says, "Are you familiar with Spitz and Fisher? Wouldn't you agree, Doctor, that it's a standard reference in your field?" I say, "It's an excellent book, but I don't agree with every word of it. Forensic science is constantly changing, so it's very difficult for any one book to be authoritative."

Sometimes an attorney will produce a paper from a legitimate scientific journal. Expect a two-pronged attack when you hear "Doctor, are you familiar with this 2011 paper on Xerox machine homicides from Guy & Another Guy, from the *Journal of Forensic Sciences*"? There is an unspoken implication, if you're not familiar with the paper, that you aren't up to date in the scientific literature of your field.

Now, this paper has been produced with an agenda: the attorney is going to use it to buttress her or his rationale of the case. Rarely, the whole paper will support their position. More frequently, however, there will be something, sometimes as little as a single partial sentence, cherry-picked out of the context of the paper, on which they'll be hanging their theory. They want you to recognize the authority of that phrase, and they will hand the paper to you up on the witness stand for your scientific review.

Now whether or not that phrase is valid, perched up there at the witness stand, the eyes of the judge, jury, and courtroom upon you, the clock ticking noisily at the back of the courtroom, you will find it is not the easiest place in the world to do a little critical reading. What makes it worse is that the attorneys often hand you printouts of forensic articles that have been heavily marked up with highlighter and annotations. These are almost impossible to ignore as you try to read the article critically—your eyes go straight to the highlighted phrases, and your comprehension of the other elements in the paper is weakened. In these circumstances, particularly if the paper or textbook you have just been handed involves a lengthy passage for review, it is best to ask the judge if you can be excused for a few minutes to go through it. Instead of interrupting their flow, sometimes the attorney will urgently direct your attention to the passage on which she or he wants you to focus.

The key thing when testifying at trial is to recognize your function: you're not there to support the prosecution or to defeat the defense; you're there to testify in an unbiased way about the facts of the case, to share your knowledge of how and why the victim died. Avoid becoming invested in the outcome of the case: no matter how horrible the killing is, you've only seen one tiny corner of it. Murder cases are pursued aggressively in all jurisdictions, and there is a small, but profoundly significant incidence of false convictions. This means that the prosecution's case isn't always accurate; in some rare instances, an unscrupulous prosecutor may feed the forensic pathologist selective information to get the conclusions and testimony they want on the stand.

Just get up there and testify about what you found at autopsy. If you tell the truth straight down the line, you'll ensure that you haven't played a major role in the conviction of an innocent person. Personally, I don't follow up on the outcome of the cases in which I testify, although often the prosecutor will reach out to say thanks, or I'll learn of the verdict in the news media.

With practice, you'll feel more comfortable on the stand, and with continued experience, you'll feel more authoritative. Over time, you'll relax, and find trial testimony easier—believe it or not, even enjoyable!

Testifying in legal forums

No one is born a congenitally good witness. ***-Dr. Lester Adelson***

The difference between an expert witness and an ordinary ("fact") witness is enormous. An ordinary witness is required to perform one simple task. They must relate to the jury what they remember of things they perceived with their senses. Whereas an ordinary witness is usually prohibited from offering any opinions, an expert witness is called for that very purpose. In general, a witness is allowed to give an opinion, if the subject matter is of a scientific or professional matter that is beyond the scope of the average juror and the witness has sufficient skill, knowledge, or expertise in that field to appear to be helpful to the jury in the search for the truth. Federal Rule 702 states that "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."[9]

Inquiries from attorneys

As a general guideline, aside from the prosecutor who is investigating the death, you should not discuss findings with an attorney before you have completed the final death certificate. One exception to this rule is when the decedent's family requests that you communicate directly with their attorney instead of with them, in which case you may speak with the attorney at any time to the extent that you would have spoken with the family.

In **criminal matters**, you should not discuss any details of a case with defense counsel until after the suspect has been charged with a crime; until they are formally charged, they are not a criminal defendant and, therefore, there is no criminal defense attorney who is privy to the case. Once a suspect has been charged with a crime (**indicted**), you generally are free to discuss the case with defense counsel, although you are not legally obligated to do so. If you have questions or concerns, do not hesitate to contact your agency's legal department. You may discuss a criminal matter with the prosecutor at any time.

In **civil matters**, you may need to discuss the case with the attorney for your jurisdiction, as the city, county, or state may be a party to the litigation. In some instances, it is unethical for an attorney to contact certain employees of the party being sued without first contacting the party's attorney. If you are contacted by a private attorney and asked about a matter that you believe is, or is likely to be, the subject of civil litigation involving your jurisdiction, politely tell the attorney that you will first need to speak with your agency's counsel. In all discussions with any

attorney (e.g., an Assistant District/State's Attorney, a criminal defense attorney, a civil attorney), there are a number of points to remember:

1. What you say to the attorney may be used in court; be sure to discuss the case professionally and never "off the record."
2. You may freely and fully discuss your case, but you should not go beyond its parameters: limit your discussions to the facts of the case as you know them.
3. Do not speculate and do not discuss matters outside your areas of expertise. For example, if hospital or other records indicate how long the decedent lived after an injury, you can provide that information; you can also state, for example, that death would have been instantaneous, given the nature of the injuries (e.g., decapitation).
4. ME/C staff maintain objectivity and impartiality in criminal and civil matters, regardless of the identity of plaintiff and the defendant. They are neutral arbiters of the facts.
5. In general, ME/C do not provide free pathology advice to attorneys; if an inquiry does not involve an ME/C matter, the attorney may be told that private pathologists can be retained to provide that advice. Some jurisdictions require the ME/C to provide free pathology advice to other governmental agencies. If you have performed the autopsy, then you are a legitimate witness who may be called to testify. In civil cases, the attorneys may prefer to retain their own experts so as not to have to rely upon an independent medical examiner who may not be interested in facilitating a nuanced argument of the case.

On occasion, an outside attorney may ask you to save, or "preserve" documents, tissue, etc., in a case that you have handled. All such requests should be accommodated by having a "preservation order" (also known as a "litigation hold") placed on the items to prevent their destruction/discard while litigation is pending. You also may receive an email "preservation order" instructing you not to destroy or discard specific items related to a particular case; you must comply with this directive, while notifying the agency's appropriate department. It is best to put a time limit on these requests—such as a "five-year hold," which would require a renewal by the attorney. Otherwise, these specimens will be held for decades, even after the case has settled.

Testimony at depositions, grand juries, or trials

> If the law has made you a witness, remain a man of science. You have no victim to avenge, no guilty or innocent person to convict or save— you must bear testimony within the limits of science. ***-Dr. P.C.H. Brouardel***

There are three forums during which formal testimony is taken of a witness. These are depositions, pretrial hearings/grand juries, and trials.

Depositions

Sworn testimony may be taken (and recorded by a court reporter or other recording device) at a deposition, *also known as an* **Examination Before Trial**. Depositions are pretrial proceedings, generally associated with civil litigation, used to discover facts (which may also lead to other evidence), preserve the testimony of a witness, and/or lock in a witness's version of events. **Depositions are less formal than trials (there is no judge or jury present), the scope of questioning may be broader, and trial-relevant objections may be waived (or "noted")**. Cases can be won or lost because of a witness's deposition testimony. One of the best ways to reduce the credibility of a trial witness, for example, is to show contradictions between trial and deposition testimony. So, it is wise to take depositions as seriously as you would your testimony at trial.

One's oral deposition may be preceded by a *subpoena* for the record. The subpoena may call for production of specific or all available records. The examining attorney may examine the witness as to all those documents. Documents are generally marked as exhibits in sequence before the witness is examined about the information contained in the documents, and the witness should have ample time to examine the document and ascertain whether or not it is the document the attorney is referring to in their questioning. *If you are not given ample time, take your time.* There is no written record of the amount of time you need to pause to think or review during the course of a deposition. Resist the temptation to please, to feel pressured, or to be rushed by anyone in the room. Your answers are being recorded, word for word. Take the time you need to consider them, and the specifics of the question you are being asked, before you speak.

A technique sometimes used by lawyers to attempt to prod a witness to volunteer additional information, particularly at a deposition, is the **"pregnant pause."** The deposing counsel asks a question, the witness responds, and then counsel simply stares at the witness in silence, waiting for some further response. The temptation for many

witnesses is to fill the void with something, anything, even if the witness has nothing to say or has answered the question appropriately and thoroughly. Periods of silence are uncomfortable to the average person engaged in conversation, but the urge to speak must be modulated. When a witness has completed their answer, they should not speak again until another question is asked. It is also important to be aware of the fact that, since neither judge nor jury is in the room, behaviors are not being witnessed, nor do they necessarily translate in the written record of the exchange. Tone is not transcribed and may range from quite civil to unapologetically aggressive. Take that into account in the management of your expectations as you walk into the room, and **try to psychologically inoculate yourself against any potential bluster, sticking instead to the facts, the science, and, ultimately, the truth.**

Grand jury

Some jurisdictions use a grand jury system to indict a person for a crime. Others may use a *probable cause hearing* before a judge. A grand jury comprises residents from that jurisdiction who hear evidence (a grand jury is typically larger than a jury in a trial) and then decide whether or not to formally charge, or **indict**, a person for a crime. There is no judge in the grand jury room, nor is the defendant or their defense attorney. As such, there is no cross-examination; however, jurors may be allowed to ask questions that are usually filtered through a prosecutor. Grand jury testimony is recorded by a court reporter, who is in the grand jury room; therefore, your testimony becomes "discoverable" and available to the defense counsel if/when you are later called at trial as an expert witness. The grand jury inquiry is a closed proceeding. As such, you may not discuss your grand jury testimony with any lawyer except the assigned prosecutor. A suspect only becomes a defendant once indicted. Until that time, the forensic pathologist (FP) is unable to speak about the case to any defense attorneys.

Trial

Trials occur in civil, criminal, and family courts and may occur at the local, state, or federal levels. They usually involve a jury; however, some defendants may elect to have a bench (judge only) trial. Before testifying in court, most forensic pathologists anticipate their testimony and define the limits of their opinions. As such, it's important to spend a good deal of time reviewing all of the details of the case being adjudicated.

Steps in the preparation for testimony

> Chance favors the prepared mind. ***-Louis Pasteur***

After an attorney calls and/or you receive a subpoena:

1. *If you choose to bring anything to court, request a "true" or "certified" copy of the case file from your records department* (the original case file does not go to court). Be careful what you write on your copy of the autopsy report that you bring to court to testify, as the defense may ask to look at your entire file during the trial. There are two types of subpoenas: *Subpoena ad testificandum* orders a person to testify before the ordering authority or face punishment, and *Subpoena duces tecum* orders a person or organization to bring physical evidence before the ordering authority or face punishment. The latter is often used for requests to mail copies of documents to a requesting party or directly to court. Some prosecutor's offices do not summon forensic pathologists to testify by subpoena. Rather, they often do so by phone or email and organize any further scheduling that way. Others subpoena as a matter of policy and/or for the record. Civil attorneys more commonly subpoena neutral parties, such as expert witnesses from ME/C offices.
2. *It is best not to plan to go to court on the date listed on the subpoena without first speaking with the attorney.* Typically, that date is merely a place holder, an indicator of the day the trial starts, but they usually don't need the expert until some later time. That said, even though the date may change, the witness is still under subpoena to appear, whenever that may be.
3. *Fellows should review the case with a senior medical examiner* prior to their testimony, including the autopsy report, notes, diagrams, photographs, etc.
4. *It is important to meet with the attorney in advance, by phone, virtual meeting, or in person* (not in the courthouse hallway 10 minutes before testimony), to review the questions you will be asked (including the questions that they anticipate you may be asked on **cross-examination**—testimony directed by the opposing attorney). There should be no surprise questions on **direct examination** (testimony that is directed by the attorney calling the witness).
5. *What is the opposing counsel's "theory" of the case?* This may help you anticipate issues or questions that may arise on cross-examination. Not uncommonly, the issue at the center of the case is only one of *identity* (i.e., that the

defendant did not commit the crime, rather that someone else did). Rarely is the line of defense focused on issues related to the opinion of the ME/C (cause of death) in those instances. As such, cross-examination may be minimal in that scenario.

6. *Do not be humble; make certain to inform the attorney of all of your qualifications, educational background, certifications, etc.* It is often a good idea to provide the attorney with your curriculum vitae (use your office address and phone number).

In preparation for trial, it is best review the case file carefully, as well as any prior testimony pertaining to the case (e.g., from grand jury). There can be insubstantial (semantic) differences in testimony given on the same case by the same person, some of which may be focused on under the scrutiny of cross-examination. These typically trivial differences can be exploited by an attorney attempting to argue that you have changed your opinion. By reading prior testimony, it refreshes your recollection about the issues of the case and also reminds you of the opinions that were previously asserted, opinions that have not likely changed, but that are helpful to review. This will help prevent "innocent" contradictions or inconsistencies between deposition or grand jury and trial testimony. If their content is critical to your determination of cause and manner of death, one may review radiographs, microscopic slides, stock jars, etc. The autopsy images are invariably reviewed.

The courtroom

Once you are called into the courtroom (usually you are not allowed to sit in the courtroom when other witnesses are testifying), you will be immediately directed to the witness box by a court officer. Each of the legal parties will already be seated at separate tables, and the jury will already be seated in the jury box by the time the first witness is called. Once in the witness box, you will be asked to remain standing, raise your right hand, and then be sworn in (or affirmed) by the clerk. They will also typically ask you to state your full name (spell it), your place of employment, and, usually, your address (give your work address). The judge is usually the first to speak to the witness after they are sworn in. A cordial and respectful greeting from the judge is usually followed by some basic instructions. In terms of the etiquette in addressing and responding to a judge, "Yes, Your Honor. Thank you" is usually both sufficient and appropriate.

The four domains of credibility are: **trustworthiness, knowledge, confidence, and likability**.[10–17] These also are the attributes of good "witness-ship." Without credibility, the message of the witness, expert or fact, and the important information they need to convey may be lost entirely, no matter its veracity. **Likability** has been described as one of the most important attributes of the expert witness and is defined as the degree to which an expert is friendly, respectful, kind, well-mannered, and pleasant.[11] **Honesty and sincerity** constitute the first step in attaining credibility, and they are conveyed when the witness presents a modest demeanor and displays a sincere interest in the accuracy and truthfulness of their statements. Honesty is one of the first attributes that contribute to a witness's likability. The second is **brevity**. Most witnesses will not get flustered, confused, or embarrassed if they confine their statements to answering the question. **Be brief and to the point.** It is best to not volunteer information, argue, or make unneeded comments. An attorney once said that witnesses should be "truthful, but not candid." A third important quality of the likable and credible witness is **clarity**: errors, inconsistencies, and confusion undermine credibility. The fourth quality is **objectivity**. The ME/C is an impartial and conscientious public servant who is working for the interests of justice; they have no horse in this race. The "success" of an expert witness is not measured by whether the party having called them to court "wins" the case, but rather by whether they effectively communicated the facts and their opinions of the case from within the realm of their expertise, and have left the jurors with a better and more representative sense of the scientific basis of the case after the testimony has been put on record. The witness should be courteous, answer directly, and remain poised, irrespective of the quality, content, or tone of the questions asked of them. A final important quality is **equanimity** (emotional control), with which one ignores insults, badgering, and innuendoes. A display of anger results in a loss of credibility.[13,18]

Standard qualification questions (with some examples of responses):

1. What is your name and work address?
2. What is your occupation? (*A physician, a medical doctor*)
3. By whom are you employed?
4. How long have you been so employed?
5. What is the function of the ME/C?

To investigate all unnatural, suspicious, and unexpected deaths in this jurisdiction. The major function is to establish the cause and manner of death. This is usually done by performing an autopsy.

6. What are your duties as a ME/C?
7. What is pathology?

The area of medicine that specializes in the laboratory aspects of disease and injury; among other things, it includes performing autopsies.

8. What is forensic pathology?

A subspecialty of pathology that deals with the investigation of sudden, violent, or unexpected deaths. It is a subspecialty in pathology involved in the examination of living and dead persons to provide opinions concerning the cause, mechanism, and manner of disease, injury, or death. Among other areas of expertise, forensic pathologists are experts in patterns of injury.

9. What is your education and training in this field?
10. Are you licensed to practice medicine?
11. When and where did you receive your license (know the date)?
12. What is the American Board of Pathology?
13. Are you certified by the American Board of Pathology?
14. What is an autopsy?
15. Approximately how many autopsies have you performed or observed?

Approximately _____ and I have observed or assisted in two to three times as many.

16. Have you been qualified before as an expert in the field of forensic pathology in a court of law?
17. Approximately how often and in what courts?
18. Have you ever been denied qualification as an expert in forensic pathology?
19. Your Honor, at this time, I ask that Doctor X be qualified as an expert in the field of forensic pathology.

Typical direct examination questions:

Answer the questions as asked. It is best to try to get critical information out first—do not do a fancy windup—just throw it. One should answer clearly, concisely, and with conviction. Below are a few examples:

1. What is a cause of death?
2. What is a manner of death?
3. Did you perform an autopsy on Mr. X?
4. What is toxicology? *The science of drugs and poisons.*
5. Are you an expert in toxicology?

I am an expert in interpretive toxicology, but analytical (testing) toxicology falls within the realm of the forensic toxicologist.

6. What is sharp injury? What is a stab wound?
7. What is an incision?
8. What is blunt injury? What is a contusion?
9. What is a laceration?
10. What is an abrasion?
11. What did you find on the external examination, on the internal examination?
12. What is your opinion of the cause of death?

Cross-examination questions:

Cross-examination questions often attempt to limit the witness's responses to simple "yes" or "no" answers, some of which may be used later during closing arguments to support a theory of the case. The questions may contain subtle differences that attempt to extract a useful response. The structure of the question (e.g., compound questions) may be used to try to achieve this result. One of the most important answers is, "I don't know." Many experts are reluctant to admit to not knowing an answer to a question. As Dr. Hirsch was fond of pointing out, "Someone who has all the answers all the time is either a scoundrel or a fool." Saying "I don't know" has two benefits. First, it is truthful. Second, it will increase your credibility with the triers of fact. Do not be afraid to say it, Such an unapologetically honest answer puts both your humanity and your integrity on display.

The following are examples of issues and questions that may be encountered in cross-examination exchanges, followed by potential answers that represent a larger illustration. In all circumstances, the assumption is that any responses that you offer in court will be truthful, first and foremost. That said, the illustrative exchanges below are not intended to offer a script to be memorized, but rather represent examples of appropriate and respectful responses that reveal a broader point: how to field sometimes intentionally difficult questions truthfully, respectfully, and artfully, without falling into traps that may obfuscate the facts, and potentially derail your duty as an expert witness. The goal of the proceeding, therefore, is to help maximize the conveyance of facts and fact-based opinions, while minimizing the effects of strategies that may distract or misrepresent the truth (to "Slay a beautiful theory with an ugly fact.").

Potentially challenging or otherwise tricky questions

1. If given multiple questions in one (compound question):

If you are asked several questions rolled into one, it will usually be impossible to answer accurately unless you break them down. In such an instance, it is appropriate to say:

"Your question contains several components, which I'll try to answer one by one."

If you are confused about how to break the questions down, simply say to the questioner: "That question seems to contain a number of separate concerns. Can you break them down for me and ask me the questions one at a time?" For example, a question such as, "Did you find the gun in the alley and take it with you?" should be asked as, "Did you find the gun in the alley?" and "Did you take it with you?"

2. Beware of leading questions (i.e., which contain the answer within the question):

These questions often begin with phrases such as, "Isn't it a fact that…?" or "The fact is, isn't it, doctor, that…" These are usually leading questions containing implications or assumptions that may be untrue or only partially true. Some questioners will put their leading questions in another form by presenting a hypothesis and following it with, "Isn't that correct?" or "Isn't that true?" Remember: you know the answer; the questioner doesn't. The court is most interested in your answer, not the foregone conclusion of the questioner. In each instance of this category of query, the questioner is trying to lead you to give an answer that may or may not be the truth.

Witnesses are frequently asked leading questions that suggest information which is either half true or contains facts not within the witness's knowledge. These questions may sound plausible at first blush, but it is the expert witness's responsibility to look at the entire question and determine whether or not they know enough to give a valid answer. For example, one may be asked: "This is a contact gunshot wound, correct?" The proper question is: "What is the range of fire of this gunshot wound?" Leading questions are permitted under certain circumstances (e.g., cross-examinations, expert witnesses).

3. Beware of exact numbers: In a humorous, if still illustrative example of how far he would go in allowing a questioner to pressure him into opining in a narrowly quantitative fashion, Dr. Hirsch suggested answering the following to the question, "how many does 'a few' mean?": *"A few is more than a couple and less than several."* The point of his sharing this was not at all to encourage petulance, but to point out that we sometimes simply cannot accurately quantitate. Exact numbers are, at times and not uncommonly in forensic pathology practice, unknowable, at least with the kind of precision that may be asked of us. "Speculation is built on a foundation of assumption."

If pressed about an exact number (e.g., how many hours had the decedent been dead when discovered?), some reasonable responses may include:

"In order to answer any more specifically than that, I would have to speculate."

This response will likely compel the judge to intervene, as a witness is never allowed to speculate.

4. If you are asked an apparent "yes" or "no" question that cannot be answered simply "yes" or "no" without misleading the jury (e.g., do you still cheat on your taxes?):

Common responses include:

"I can't truthfully answer the question with a yes or no; may I be allowed to explain?"

"I am afraid that if I try to answer that with a simple yes or no, I may mislead the jury."

5. If asked if a certain textbook is an authoritative or definitive text:

Authoritative means that you have read the entire book and agree with everything in it. If this is not the case, the answer should be "no." That also applies to this book! That said, be careful to not contradict your own writing.

6. If you have been read a line from book:

"I cannot answer the question without seeing the quote in context."
(Besides the context, also check the year and the edition)

7. If asked if something is "possible":

One must say "yes" if it is possible, that is, if it does not defy the laws of physics/nature. There do exist, however, reasonable and unreasonable possibilities. Often these answers get clarified on redirect. If presented with an *unreasonable* possibility, one might clarify with some version of:
"Yes, it is possible because it doesn't defy the laws of nature, but it is extremely unlikely, and therefore, represents an unreasonable possibility."
Dr. Hirsch once memorably responded, on redirect, to further qualify an unreasonable hypothetical possibility that had been presented to him under cross-examination:
"While I can't say that's impossible, it is so highly unlikely that it stands shoulder to shoulder with impossibility."

8. If a mistake in the autopsy report is asked about (comma, spelling mistake):

"Thank you for pointing that out to me; I hope it did not cause any confusion."

9. If asked to criticize another person's autopsy report:

"The report is not optimal, but it has sufficient information. When I look back at some of my own reports, they are not always optimal."

10. If interrupted:

"Excuse me counsel, but I would like the opportunity to finish my answer to the question that you already asked me."

11. If an attorney gets overly aggressive:

"Your honor, he is distracting me by speaking so loudly and standing so closely."
"There is no need to yell, I can hear you quite well." This may be useful in depositions to put into the record that an attorney is yelling. One usually cannot discern from a transcribed deposition that a person was yelling.

12. Be careful of the questioner's attempts to conflate "necessary" for "important." For example, if some areas are not filled out on an autopsy worksheet:

"I did not feel it was necessary. Those areas and systems were normal."
"The issue is not how I fill out forms but, whether I documented the injuries of the decedent. As you can see, my notes and records in that regard are quite thorough and complete."

13. "Have you ever made a mistake?"

"Yes."

14. "What do you do when you make a mistake?"

"I utter the two most difficult sentences to say: 'I was wrong' and 'You were right.'"

15. "Why did it take so long to determine the cause of death?"

"I wanted to be fair to everyone involved and make sure that we reviewed all the evidence before making a final decision."

16. If asked if you will agree to answer the following questions with a "yes" or "no" answer, you may respond: "I will try."

17. **Having a thorough understanding of degrees of certainty** is one of the many responsibilities of individuals afforded the privilege of expert witness status. Being asked about your degree of certainty is fair game in courts of law. See Chapters 2 and 3 for a more granular discussions about this.

Time of death estimates and postmortem changes: caveats and approach

Estimation of the postmortem interval is a slippery slope and merely an estimate, becoming increasingly inaccurate as that interval widens (see also Chapter 4). For that reason, forensic pathologists typically speak in ranges. Try to avoid playing the numbers game. Also, resist the urge to over explain how you arrived at your conclusion, unless specifically asked to do so, of course. Opine and answer the questions as best you can. Usually, the best way to handle this issue is to suggest that the attorney ask a hypothetical question, to which a simple "yes or no" may be the response. In response, one may be able to say whether a hypothetical time and date are "consistent" (reasonably possible) or "inconsistent" (not reasonably possible) with the physical findings (i.e., after careful consideration of the changes in the body) and the documented circumstances. "Everything is consistent; nothing is inconsistent."

For example, one may be asked, "Are the postmortem findings and circumstances *consistent with* Mr. Smith dying at around noon on July 1st?" as opposed to, "When did Mr. Smith die?" The latter is not likely to be answered with specificity or veracity, unless the death was witnessed by medical professionals and/or other reliable witnesses. The opposing counsel may also ask their own hypotheticals to which you may answer in kind with the same responses.

Objections raised while on the stand

Objections may be raised during your testimony by either counsel. The common objections surround: leading questions, hearsay, badgering, relevance, vagueness, "asked and answered," speculation, argumentativeness, or a nonresponsive answer.

In general, *hearsay*, which is testifying about the observations of another, is not admissible testimony. The medical chart is a common exception. *Surrogate testimony*, in which a forensic pathologist testifies on the report of another, may be allowed with the record entered into evidence as a business record and when the expert's opinions are based on their own *independent* review of all the evidence related to the case.[19] *Badgering the witness* is based on an *argumentative* question in which the attorney states a conclusion and then asks the witness to argue with it, often in an attempt to get the witness to change their mind. An objection based on *foundation* involves a question or response in which the attorneys failed to explain the background circumstances of how they know the information about which their witness is testifying or the attorney is inquiring.

Testimony tips

In their intended role in supplying a critical public service, ME/C offices are ideally objective, neutral, and transparent agencies by design, and therefore have no agenda, take no sides, and support no individuals or political interests. Our job as ME/Cs is to determine the cause and manner of death and to identify decedents, regardless of who is helped or harmed (in the litigation context) by these determinations. To that end, it is best too not volunteer information or to make suggestions. This is particularly true during cross-examination at a trial. Be careful if you are aware of a previous trial for the same defendant—you should not refer to any previous trial (e.g., one ending with a hung jury) in front of the jury, as this may result in a mistrial. If required, you may refer to prior "testimony," but do not use the word "trial."

If an objection to a question is interposed, or attorneys start to argue about the question, do not answer the question. At trial, wait until the judge has ruled on the objection; if you are unsure of what to do, ask the judge if you should answer the question. The term **"overruled"** (open your mouth) means that you may answer the question, while **"sustained"** (silence) means that you may *not* answer the question. If you get confused, it is easiest to just not say anything. At that point, you will either be asked a new question or the judge will say "you may answer." You also may find that, by the time the dispute is resolved, you have forgotten the question. If so, simply ask that it be read back by the court reporter before responding.

Pay no attention to the demeanor of the questioner. The attorney may be particularly charming or notably confrontational; either style may be a way of distracting you from listening to the question and providing an accurate answer. It is best to keep your demeanor professional and calm. It enhances your credibility and also makes the experience of testifying considerably less stressful.

Unlike the death certification opinions asserted in **criminal proceedings** (determined to a reasonable degree of medical/scientific certainty), those in **civil matters** require a lower burden: preponderance of evidence (more likely than not). This is predicated on the fact that, in the adjudication of criminal matters, the *civil liberties* of one or more

persons are at stake, whereas, in civil proceedings, a *monetary reward* for damages is being argued. In another divergence from most criminal matters, issues of **pain and suffering** are common, even central, to many **civil trials**, as they may lead to a verdict with a larger monetary award. One may be able to confidently and medically testify that a particular injury would not be likely to have caused immediate death, but you may (or may not) be able to opine as to whether and/or for how long the decedent had likely remained conscious after that injury. This is relevant since, logically, and legally, *issues of pain and suffering apply only to conscious individuals, as these constitute perceptive experiences.* Unconscious persons do not feel pain—that is why surgery is performed on unconscious people. As a forensic pathologist, by the time you encounter these decedents, they are no longer suffering and, depending on the circumstances of the injury and the specific case, statements about pain and suffering may be speculative. That said, in other instances, as a physician and forensic pathologist, you may be able to offer a reasonable opinion that a certain injury would more likely than not (burden of proof in civil proceedings) be associated with the experience of pain and, further, that there is no good reason to believe that the injury would have been associated with unconsciousness (based on both the evaluation of all injuries and the toxicology testing, for example). As an expert witness, the forensic pathologist may not only give their opinion regarding the cause and manner of death, but also about other inquiries to which they are confident in their responses based on their education, training, and experience. These opinions often may involve a review of witness statements and first responder findings (e.g., emergency medical service records). Without that information and depending on the case details, one may be on shaky ground, absent a clearly immediately incapacitating injury at autopsy (most forensic pathologists have autopsied a person with a gunshot through the heart who was still able to ambulate for several yards before collapsing).[20–23]

Being called to testify in a former jurisdiction

Forensic pathologists may not work in the same office in which they completed their fellowship and, in fact, may end up working in multiple offices during the course of their careers. A request that they testify in a legal proceeding involving an autopsy they performed in a jurisdiction in which they no longer work does occur. Due to various Supreme Court decisions (Melendez-Diaz v. Massachusetts, Bullcoming v. New Mexico, Williams v. Illinois),[24–26] more prosecutors are seeking testimony from the original pathologist who performed the autopsy. In the past, surrogate testimony was widely accepted. This allowed another pathologist to review the autopsy report and images and provide their *own opinion* about the death in court. That is, another forensic pathologist was allowed to testify in place of the original prosector. In these instances, the substituting pathologist would review all of the case material and, typically, the autopsy report would be submitted as a business record. A detailed, well-written autopsy report that is adequately supplemented with photographs usually suffices. The body of such an autopsy report is an objective description of the findings,[27] free of speculation and opinion. As such, any forensic pathologist would be able to review it and offer their own opinion. In addition, if this requirement was absolute, the statute of limitations of a homicide would then be the life span of the forensic pathologist.

Appropriate photographic and radiologic studies are important in providing redundant documentation in the event that autopsy notes or transcriptions are lost. As Mortiz said, "If a negative or positive postmortem finding is so important that it may make the difference between the freedom or imprisonment, or the life and death of someone, every attempt should be made to protect, preserve, and record it for others to see and evaluate."[28] Autopsy images also may be particularly useful at trial, particularly when a surrogate witness is called. For example, a defense attorney may object to the admission of an autopsy report at trial because the original pathologist is not testifying. If, in response, the judge offered that, in lieu of the autopsy report, the court would allow the surrogate forensic pathologist to use all 53 autopsy photographs to demonstrate the multiple gunshot wounds, the defense attorney may stipulate to the admission of the autopsy report, after further consideration.

Although there may be legal reasons to have the original pathologist testify, does it make a practical difference? Any forensic pathologist who practices in an office with a large number of homicides is unlikely to have an independent recollection of the details of a specific autopsy performed two or more years earlier. But, even if they were able to recall the autopsy, how reliable would that recollection be? If the original forensic pathologist essentially relies upon the report and images when they testify, what would prevent someone else from doing the same? In fact, defense and plaintiff experts are routinely allowed to give opinions regarding autopsy reports and autopsy findings in which they had no part in writing or documenting, respectively.

Live video conferencing from a remote jurisdiction may be an alternative that would reduce the time and travel issues. Having multiple forensic pathologists cosign each autopsy report may also be sufficient to allow testimony by one of the signatories in place of the actual prosector. Some forensic pathologists have been pressured to return to their primary jurisdiction to testify on an old homicide case without receiving remuneration of missed work at their current job. Attorneys may threaten subpoenas (interstate state subpoenas can be a challenge to obtain), but

subpoenas cannot compel a person to give an opinion. Therefore, the attorney may end up with a witness who refuses to provide any expert testimony.[19]

Miscellaneous

1. Bring your badge/official identification when testifying. It may be of assistance in getting you through the courthouse security checkpoints.
2. Keep a record of the times that you have testified (grand jury vs. trial, county, attorney, case name, type of death, etc.). You should be prepared to state during testimony how many times you have testified/been qualified prior to the current case.
3. You also may be asked how many autopsies you have performed, how many autopsies are performed annually by your agency, and how many homicides there are annually in your jurisdiction. Be prepared to answer these informational/background questions as well. If asked to estimate the number of firearm deaths that you have evaluated, the estimate should include all manners of death, not just homicides.

Top 10 testimony tips

1. TELL THE TRUTH.

You will be put under oath at the beginning of the testimony. The oath means that you have sworn to answer every question honestly. Falsehoods on the most minor or irrelevant answers may be used to destroy your credibility on the more important issues. Because you should be on your guard to confine your answers to the demonstrable truth, it is wise to avoid volunteering information not expressly called for by the questions asked. As everyone involved in the litigation will know, intentionally false answers may constitute the crime of perjury. As Dr. Hirsch was known to say with considerable frequency, "When all else fails, tell the truth."

2. LISTEN CAREFULLY TO EACH QUESTION.

Be sure you understand the entire question completely. Do not mentally interpret the question to assist the questioner or mentally supply definitions for vague terms. It is the questioner's job to make the questions clear. Do not hesitate to ask for clarification of a vague phrase or an ambiguous term. If the question was long and complex, if your mind wandered because of outside distraction, if it makes assumptions with which you do not agree, or if you simply did not understand the question, do not hesitate to ask for a rereading of the question. Beware of leading and compound questions.

3. PAUSE BEFORE BEGINNING EACH ANSWER.

Answer slowly. This gives you the time to reflect on the question. The written transcript will not reflect how long you take to answer a question or how long you pause. Remember, nothing a lawyer says is evidence of anything unless it is answered affirmatively by the witness. Pausing for a moment also gives either attorney the chance to object to the question, after which you must remain silent until a ruling has been made by the judge (sustained or overruled).

4. DO NOT VOLUNTEER INFORMATION YOU ARE NOT ASKED.

Answer only the question that is asked. Do not anticipate questions. Keep your answers short and to the point. Do not promise to look up information or to obtain materials, or to conduct further calculations or tests.

5. READ A DOCUMENT BEFORE YOU TESTIFY CONCERNING ITS CONTENTS.

If the document is not available and you cannot recall it exactly, say so. Testifying is not meant to be a test of memory. You may always qualify your answers with phrases such as, "to the best of my recollection."

6. DON'T ENGAGE IN CONJECTURE (DO *NOT* SPECULATE).

Answer each question, as asked. If you do not know an answer, say so. Do not assume that the examiner has accurately described your prior testimony or that of another witness when he/she/they purport to do so. Never guess if you don't know the answer. Don't guess on the basis of facts that may not be reliable. Know the facts first-hand before you are willing to give an opinion. You may ask to see documents to which references are being made. You may refer to documents contained in the file present at a deposition or the trial. Avoid being drawn into areas beyond your expertise. If you are asked an opinion concerning something outside your expertise, do not hesitate to say that you do not have the expertise to form an opinion and that anything you offered would be speculative.

7. BE CAREFUL WITH YOUR DEMEANOR.

Your position is one of responsibility and your demeanor should reflect that. Speak slowly, clearly, and audibly, so that the court reporter will be able to take down every word. Keep your dignity and avoid joking with the attorneys or the court reporter during the examination. Be courteous to the attorneys and to the court reporter. Avoid losing your temper. Some attorneys may not be conscious of an unpleasant manner which may grate on your nerves; others may try to provoke you as a stratagem. Whatever type of attorney you are dealing with, sparring with that attorney should not obscure the purpose of the proceeding, which is to provide a true distillation of the facts as you know them. Keep your concentration on that purpose, not on the personalities. Attorneys sometimes attempt to wear witnesses down or rile them up in order to provoke an inappropriate response. A witness should remain calm, take a break if they need to (particularly during a deposition), and otherwise remember that controlled anger may be a tool used by lawyers and should not be mistaken for actual anger.

8. IF YOU HAVE DISCUSSED THE CASE PREVIOUSLY, ADMIT IT.

You may be asked if you have discussed your testimony with anyone. It is perfectly acceptable and expected to have discussed your testimony prior to your appearance in a deposition or courtroom. Simply say so. It would actually be an outlier situation for a conscientious and responsible professional *not* to prepare. An attorney may attempt to insinuate that you were influenced about how to testify in a previous conversation with the other attorney. If that did not occur, say so as well. You will be able to get through this tricky area by listening carefully to the question and answering only the question that is asked. One way to avoid insinuations of this nature is to arrange to discuss the case with both or all sides present at the same time prior to trial, or at least make the offer if you are contacted by the opposing attorney. The offer may not be accepted.

9. IF THE ATTORNEYS BEGIN TO ARGUE, SIT SILENTLY.

Particularly in a deposition, one attorney may dispute whether another attorney's question is proper. If they strongly disagree, the recourse is to call the judge and obtain a ruling. The trend in some jurisdictions and in federal discovery is to allow for broad discovery, so attorneys are motivated to find a way for the deposition to proceed. Let them do their job. In most cases, you will be a disinterested third-party witness, meaning you have no stake in the outcome. Just as physicians have their own medical jargon, so do attorneys (legalese). See Table 16.1.

TABLE 16.1 Common legal terms with definitions.

Battery: Unauthorized and offensive touching.
Assault (legal): Act that *threatens* physical harm. Definition: Physical *or* verbal attack. Intent: Purpose or aim behind commission of act, i.e., hoped for or desired outcome. Motive: Instigating force responsible for initiating or carrying out the deed.
Corpus delicti: The facts constituting or proving a crime. Material substance or foundation of a crime. It is not just the body in the murder case, but the fact that he has been murdered.
Habeas corpus: "You have the body." An order requiring that a detained person be brought before a court at a stated time and place to decide the legality of his imprisonment.
Arbitrary: Not fixed by rules, left to one's judgment. Based on one's whim.
Capricious: Erratic, tending to change abruptly without apparent reason.
Writ of mandamus: A court order commanding that a specified thing be done.
Stipulate: Factual statement accepted as true.
Hearsay: Testifying about the observations of another (medical chart is an exception)
Continuance: Legal proceeding moved to a later date.
Speculate: Guess (never do it).
Res ipsa loquitur: The thing speaks for itself.

High-profile deaths, media inquiries, and press offices

Distribution of partial information guarantees complete misunderstanding.
On sensationalism: "It makes heat without shedding light." ***-Dr. Charles S. Hirsch***

The general public often has great interest in the work of the forensic pathologist.[29] That interest may range from simple curiosity in a particularly odd or unusual death, a desire to know details of the death of a well-known celebrity or a multiple fatality incident, or interest in a death that stems from having a nexus with complex, emotional and political issues affecting the community. Communication with the public occurs by way of both reputable and nonreputable media outlets through a number of methods, including print, television, radio, and the internet. In addition, today, social media channels can be an effective and far-reaching medium for news stories.

The frontline forensic pathologist may have little opportunity to be "in front of the cameras" and may believe their presence in the public space is marked by anonymity. However, the words in the autopsy report and any associated courtroom or deposition testimony may be directly quoted in news stories or headlines. Facts and opinions that are clear to the forensic pathologist may be reported inaccurately, or they can be intentionally distorted or taken out of context to support an "interesting" article. Indeed, forensic pathology is not for the faint of heart.

In cases for which there is sufficient public interest to warrant a more public communication or response, the ME/C office will need to decide how to address this. There are a number of avenues to take.

Silence or nonresponsiveness

Although it is an option, nonresponsiveness to the media is generally a poor approach and will likely create animosity and suspicion. As public servants, we have an obligation to communicate with and speak to the public. "Information void is the mother of paranoia." Avoid using the words, "no comment."

Handling individual inquiries from the media

If possible, the best model is to have as few people as possible or, ideally, a dedicated public relations professions (PRPs) officer speak with media or provide updates on behalf of the office. This provides consistency, allows the PRP to build relationships with reporters, and also allows you to be nimble when new information or changes in strategy arise.

When sharing information about a case or incident to different inquirers, it is paramount to remain consistent and to not show favoritism. Provide the same information to each caller. Some offices may have a "press" email distribution list.

Press releases

The written press release is a reliable and efficient means by which to share information. It can take the form of an updatable web page, emails to known media outlets, or common social media platforms. A press release has several advantages. The same information is provided to everyone at the same time and at a time of your choosing. The information being shared is well-defined, unlike a verbal conversation, which can vary in nuance as time goes on. Moreover, something in writing can, if desired, be reviewed by various people prior to release. Invariably, media will follow up with additional questions to the release (as they may have a desire to get "exclusive" information). One can then either respond as needed or edit/update the press release to ensure consistency.

Press releases are particularly useful when a matter is complicated or very careful messaging is necessary.

Press conferences

Under certain circumstances, usually when a situation is extremely acute and there is heightened public interest, a press conference is in order. A press conference is suitable when release of information must be coordinated with other agencies such as law enforcement, government officials, or public health officials, such as in a mass fatality incident.

A press conference usually has two or three parts: the statements by those who are speaking, which are usually followed by questions from the press, while still on camera, sometimes followed by requests for interviews. As much

as possible, preparation is extremely important and can make the difference between a success or a failure. It is helpful to have written speaking points prepared, either verbatim or bulleted, using larger text with generous spacing. If possible, do not go to the press conference alone. Bring either a PRP or another staff member who can monitor questions, take notes, and keep an eye on interviews. Know the order of the speakers, and be prepared to potentially introduce the speaker following you, if necessary. Introduce yourself. Look professional. Speak clearly and slowly. Do everything possible to consider what you say, given the circumstances—don't be tone deaf. You may be asked to spell your name.

When speaking in any crisis situation, the following is a quick set of items to address. Being familiar with this list can help you, particularly when you might be caught off guard or be asked to speak with little warning.

- Condolences
- What we know
- How we know it
- What is being done
- What you can do
- Next planned update

Example: "Good afternoon. My name is Dr. _____, Chief/Deputy Medical Examiner of _____. On behalf of my department, I would like to extend our deepest condolences to the families affected by this tragedy. As of 15 minutes ago, our staff have recovered eight of the 10 bodies from the scene, and we have positively[30] identified seven of them. We are in the process of locating and notifying next of kin. Names will be provided as soon as the families are notified. We will continue to work to recover the remaining bodes and to work quickly to establish identification. If you believe someone you know may have been involved in this tragic incident, please call 1800-xxx-xxxx. Again, I wish to extend my condolences to all those affected. We will be providing another update tomorrow morning at 9:00 a.m."

Interviews

Interviews can happen suddenly and catch you off guard, or they may be planned and, as such, allow time to prepare. When preparing for an interview, always ask for the topic or even the questions—never walk in cold. Give yourself time to review the issue and prepare the points you may want to make.

Or,

"That information cannot be released at the present time because of the ongoing police investigation, but we will keep you apprised as soon as it can be released."

Some additional points to consider when being interviewed in person.

- Look and act professional.
- Watch your facial expressions and reactions. If asked an obnoxious or an inappropriate question, take care not to overreact. Those moments tend to make their way to the broadcast.
- Never speculate—It can be interpreted as fact.
- Never say "no comment"—This may sound like you are hiding something. Instead, say "our findings are not yet complete" or "we are not yet prepared to discuss our findings."
- Never lie—This will destroy your credibility.
- Never speak off the record (or "on background")—the reporter may misinterpret the statement as being on the record. It is best to take the approach that there is no such thing as "off the record."
- The incident is under investigation, and we are taking this incident very seriously.
- Do not play favorites—give everyone the same information and access.
- If approached and not ready: Smile—"I would love to speak to you about this issue, but I need a few minutes first."
- We reviewed the autopsy findings in light of additional information that was not available on the day of the autopsy. This additional information raised a reasonable possibility that this was not a homicide.

Some quotes that may be of help:

"Decisions cannot transcend the information upon which they are based." (Dr. Charles S. Hirsch)

"We render a diagnosis on everything we see and not on isolated findings." (Dr. Charles S. Hirsch)

"Death certificates are written on paper and not engraved in stone. If we obtain additional information that may affect our opinion, we will consider it." (Dr. Charles S. Hirsch)

"Everyone is entitled to his opinion, but not his own facts." (Daniel Patrick Moynihan)

In an in-person interview, if possible, bringing a PRP can again be extremely helpful. Because these professionals tend to have experience in the journalism industry and may very well have worked for the very media company with whom you are speaking, they have special insight about where reporters might be going or can even intervene if they feel the interview is becoming problematic. Importantly, they can also provide a third-party record of what happened.

If the interview is for print, you may be asked if the conversation can be recorded. If it is not brought up by the reporter, it is advisable to ask at the outset of the interview whether they are recording you. You should make a decision prior to the interview on this topic. Recordings can assist in providing an accurate record of what was asked and what the responses were. If asked whether they can record, you might ask if you also can record.

If the issue is particularly complicated or sensitive, one alternative to the face-to-face interview is obtaining questions in writing and then providing a written response. This has several advantages. First, responses can be carefully crafted with consideration of risk. Second, there is written documentation of what was asked and what was answered. Typically, this approach may lead to additional questions, and it may be less desirable to certain reporters.

Relationship with the media

Just like any relationship, yours with the media will take time to build and nurture. Make it clear that their access to you is based upon their fairness to you. There is a balance or natural tension between how you understand information you wish to provide and the reporter's need to write an article that will be interesting and read as many times as possible, by as many people as possible. It can seem confrontational or adversarial at times, depending on the "story."

Release of information

The type of investigative information that can be released to the public varies from jurisdiction to jurisdiction. Some offices cannot generally release autopsy and investigative reports, while others must if they are requested. Even if reports must be released upon request, redaction of certain information in the documents may be required or preferable. Death certificate information is public. In an active, ongoing investigation, sharing certain information with the public can adversely affect a law enforcement investigation. One must familiarize themselves with the local laws that govern what can and cannot be shared and the acute investigative sensitivities at play prior to speaking with or releasing information to the public or the media.

For example, homicides and deaths of civilians involving law enforcement actions may constitute high-profile deaths. The family and press want to know what happened. Families may even obtain their own second autopsies. The risk of releasing information too soon may compromise the investigation. The released information may allow a suspect to tailor their testimony to fit the findings. For example, a suspect may intend to say that the gun inadvertently discharged and struck the decedent, who was sitting several feet away. If the suspect learns that the autopsy documented a close-range gunshot wound, the suspect could take that into account and avoid giving an inconsistent statement.

Consideration of families and the media

The ME/C office is not alone in having the attention of the media and the public. The families of the decedent(s) have it as well. They may very well have reporters calling them, showing up at their homes, or intercepting them as they go about their day. For that reason, families may often have an intermediary to deal with government agencies and the media. Usually, these are attorneys, but they may be family friends or others.

As in all cases, it is important to keep open lines of communication with the family. However, if a family tends to spend time giving press conferences or sharing information with the public, one must be cautious or at least crystal clear with what is shared and what cannot be made public. Letting details get "in the wind" can cause problems later at trial.

Prior to releasing a high-profile report or case file to the public, share the completed reports with the family in private, answer their questions, and address their concerns. This should be done when everything is queued up

(i.e., the press release page or other releases are vetted and written, but require only "the push of a button" to have them go live). Coordinate the timing of the release with the family. They may have their own public relations representative or desire to send out their own press release, and it is beneficial for everyone to work together. What should be avoided is the family releasing a report prior to your office.

Tone

Under no circumstances should you embrace sensationalism and hyperbole. Avoid leaning toward either a prosecutorial or defensive stance—the ME/C is not the trier of fact. Stick with the facts, what you know, and what you can share. The role of the forensic pathologist is to be neutral and to provide reasonable opinions as to the cause and manner of death, not to be entertaining or to create drama.

Mistakes

Everyone makes mistakes. The old joke is, "I thought I had made a mistake once, but I was wrong. My spouse has certainly believed so on several occasions." Charles Hirsch was known to say that he was "glad my job description doesn't contain the adjective infallible." When mistakes are made, they should be acknowledged and corrected. Initially, it may not be clear what happened and it may be best to describe them as "cases" and not mistakes.

Public speaking: case presentations, lectures, and teaching

> Medical education has awakened to the realization that trauma deserves and demands serious study, and forensic pathologists have important contributions to make to this educational effort.[31] ***Dr. Charles S. Hirsch***

Case presentations

The level of detail best used as part of in-agency case presentations should be inversely proportionate to that in our reports. The former is focused on pertinent negatives and positives, and the other is exhaustive.

Although the tendency is to face and speak to the chief or deputy chief, you must remember that a case conference includes everyone in the room. Make believe you're talking to a jury in court (case presentations are excellent practice for this): make each person around the table feel as if you're speaking directly to them individually, make roving eye contact, speak up, and be professional. Avoid reading from your notes; be familiar with your cases before you walk into the room.

Think about your cases before you present. Anticipate the "what if" questions. Anticipate relevant questions and answer them before they are asked. Start with the obvious things your audience is wondering about; don't leave them in suspense. If you have just described the sudden death of a morbidly obese 36-year-old woman who experienced precipitous dyspnea prior to a cardiac arrest, the first thing you should be communicating is not the length of her hair or the presence of gallstones, but rather the presence or absence of a pulmonary thromboembolism!

In your preparation, as in your certifications, it is important and helpful in your focus to start with the mechanism of death. You should never leave the autopsy table without doing so, and certainly should not present a case without having considered and landed on a mechanistic theory. If you fail to share your conclusion or current theory, you should not be surprised by that question. It is one of the most important and predictable questions you will be asked. Not asking it before determining cause and manner puts the cart well ahead of the horse.

Case presentations should be succinct. Start with the age and sex of the decedent (25-year-old *man*, not male). Give a brief synopsis of the circumstances, followed by the pertinent negative and positive external and internal examination findings. In trauma deaths, summarize the overall picture, rather than presenting the granular details that would be found in an autopsy report, with measurements and tracks. Where there is extensive and expected trauma, from a descent from height, for example, you would be well-advised to make a broader statement, as opposed to a comprehensive cataloging of every mark on the body. Something like the following would suffice: "There was extensive/devastating blunt force trauma of the body with multiple fractures and lacerations of nearly every organ." If, on the other hand, a particular injury is unusual, dramatic, vexing, or otherwise worth discussing, by all means, share it in more detail and/or ask the group questions about it.

State the cause and manner of death, if determined, or, alternatively, your theory/differential diagnoses for cause of death and your focused plan to sort it out, if pending further study. If you certified a mechanical injury, share the wording of your "how injury occurred" section. If a student or resident plans to present one of your cases, take the time to prepare them by reviewing with them some of the above concepts.

Formal lectures

> The brain can absorb no more than the seat can endure. ***-Dr. Charles S. Hirsch***

Not surprisingly, PowerPoint-type presentations are the mainstay of forensic pathology lectures and presentations. They are even occasionally used in court. Therefore, familiarity with this software, as well as virtual presentation platforms, is key. Font size for titles should be between 36–44 and 20–32 for the text. Avoid using more than one or two different font types. For the introduction, it can be quite effective to open with a "hook," such as a quote, a question, a dramatic statement, or a scenario ("Imagine …"). It is best to then preview key points and let the audience know what is in it for *them*. The body of the talk should aim to engage the audience roughly every 10 min, using a variety of techniques such as questions, sharing a story, polls, etc. The conclusion should summarize the key points, restate the benefits to them, an action step/key takeaway, and then present a closing hook. Graphic images may have important implications for a given presentation, but keeping such images frozen and projected on the screen for a prolonged period, while continuing to talk, serves as a sometimes uncomfortable and unnecessary distraction, even in a room filled with forensic pathologists. Similarly, efforts at deidentification of the decedents are a basic and reasonable expectation for any formal presentation.

Teaching

There are a wide range of professionals and medical students and residents who rotate at ME/C offices. These may include EMT students, pathologists' assistant students, medical students, and pathology residents. Due to the various levels of medical knowledge, it is helpful to tailor your teaching to the visitor. EMT students are particularly interested in the anatomy of the neck ("here is the cricoid cartilage"); it is helpful to clarify the concepts surrounding terminal aspiration versus choking.

Medical students will like everything—a review of anatomy always works. Some worthwhile topics include:

- Explaining cause versus manner (ask them how to fill out the death certificate on the case)
- The differences between and definitions of hypertensive and atherosclerotic heart disease; the definition of cardiac hypertrophy
- The differences between blunt and sharp injuries
- The power of vitreous chemistry
- Toxicology testing (the value of a peripheral blood sample, a sample that supports an acute intoxication, etc.)
- In situ/organ by organ evisceration and dissection tips
- Cutting through rib cartilage, not bone.
- The cardiac conduction system.
- Spinal cord removal.
- Stripping of the dura, pleura, and psoas muscle to look for fractures.
- Dissection and microscopic sections in pulmonary embolism cases.
- Removing the anterior neck structures after the brain and thoracic organs have been removed.

During a fellow's training year, a lot of time is spent in the autopsy room, working up cases and, hopefully, taking advantage of the opportunity to observe interesting findings in other cases. In trying to complete one's own cases, it is easy to miss out on these other examinations. It also is easy to understand why one would not be concerned with anything else but the matter "at your own hands." Being prepared to give lectures, sometimes at the spur of the moment, may feel like even less of a priority.

But if a fellow waits for a less harried time (i.e., after the fellowship year) to start collecting images as teaching material, one will have passed up a golden opportunity. The FP training year is a singular time, during which the fellow has exposure to so many cases. Between their assigned cases and those of colleagues, they will have seen enough examples of injuries and disease to establish a solid collection. During one's fellowship year, one will be exposed to many typical, as well as atypical forensic injuries, and the basic concepts they represent. If documented photographically, the training year can provide the fellow with an excellent start to a comprehensive personal collection. An organized photo collection will be of tremendous help for future talks and presentations.

Written communication

Memorialize that conversation on paper. ***-Dr. Charles S. Hirsch***

While well-cultivated observational and investigative acumen yield the most accurate and comprehensive fact gathering and form the basis for asserting sound forensic opinions, the momentum of their benefit is slowed or nearly halted by poor execution in translating and organizing those observations and opinions into the words that comprise a clear and communicative autopsy report. The same can be said of death certificates (covered in Chapter 3). A bad report is only marginally helpful.

At the center of the transition from hospital to forensic autopsy practice is the synthesis of findings into a written narrative that reflects the opinions for which we must take increasing ownership. A natural extension of this transition then is the development of more declaratively stated observations and conclusions and a resistance to hedge or hide behind disclaimers and the passive voice. In essence, this represents a shift toward getting comfortable with the notion that a defense of opinions will be a focal point of this particular chosen career and practice.

In terms of enhancing our written communication, the best forensic autopsy report is predicated on equal parts high quality content and deliberate organization. One page (sometimes two), first or last, should be dedicated to the synthesis of findings, anatomic and historical, organized in decreasing order of importance to reflect the FP's specific impressions of the case, as well as of the final cause and manner of death determination. This final presentation of information (**the Final Diagnoses**) requires thoughtful analysis, mechanistic thinking, and sound forensic knowledge, representing **"the editorial"** segment of the report. In general, the main headings on this page (often Roman numerals) should reflect primary diseases or injuries that are typically etiologically specific, with nonetiologically specific subheadings and sometimes subsubheadings that reflect their anatomic and/or clinical sequelae. The inverse organization is more typical of the death certificate, where the immediate causes and mechanisms (sequelae), if cited, precede the proximate/underlying cause (i.e., the "bottom line"), the former, however, not being requisite in death certification, per se (see Chapter 3 for examples). With regard to the latter, clear, deliberate, and cogent cause of death statement wording is of the utmost importance; word choice seemingly as minor as "of" versus "to," "including," "with," or "following" may have specific relevance to stakeholders and potential future analytic and adjudicative issues and to our very framing of the case, depending on the details.

In terms of the rest of the report (**the body**), its primary purpose is to establish clear and thorough *documentation*, with emphasis on "clear and thorough"! The body of the report constitutes **"the news,"** the *objective* documentation of findings that support the ultimate synthesis and conclusions represented by the "Final Diagnoses." The objective, comprehensive, and descriptive features of this part of the report are critical for the forensic pathologist in training to grasp early and ultimately master in their practice. It also allows third parties to review the report, along with associated imaging, such that independent conclusions may be drawn, forming the basis of both internal quality assurance efforts and our ability to testify in courts of law in lieu of the original medical examiner, when they are unavailable. In his now famous (and timeless) treatise, "Classical Mistakes in Forensic Pathology," Dr. Alan Moritz cautioned the following,

> It is as surprising as it is distressing to note how frequently pathologists include statements of opinion and interpretation in the part of the protocol that is supposed to be objective and factual. The purpose of the protocol is twofold. One is to record a sufficiently detailed, factual, and non-interpretive description of the observed conditions, in order that a competent reader may form his own opinions in regard to the significance of the changes that were observed and described. The other is to interpret the significance of the changes described.[28]

Put more plainly, Dr. Hirsch simply suggested, "Describe what you see" *vis a vis* the **body** of the autopsy report. See also Appendices A–C.

On occasion, an inadvertent written error, substantial or minor, will be discovered in an autopsy report at a later time, sometimes even in court. The best way to respond to this discovery, whether in your own report or that of another, is to correct it (if before adjudication), and/or own it and humbly apologize for the mistake, if discovered too late, by a defense attorney, for example. Dr. Hirsch was fond of saying that you will never be fired for making a mistake, but you will be in deep trouble for trying to cover it up: "I'm glad my job description doesn't contain the adjective 'infallible'," he would say. Human error is inevitable, but when discovered, it must be corrected and/or recognized on record. Full disclosure is always the rule. Admitting that you're human will go a long way in maintaining your credibility.

While it is important to choose the most accurate and descriptive words and strike a balance in the amount of illustrative detail used to succinctly characterize findings, the overall report organization and sentence syntax can distinguish an excellent and highly communicative document from one that confuses more than it clarifies. The devil, as they say, is in the details. See Table 16.2.

TABLE 16.2 Terminology tips.

Penetrating: Enters, but does not exit
Perforating: Enters and exits (organ or body region).
Tract: System of body parts that serves a combined anatomic purpose (e.g., gastrointestinal tract)
Track: Detectable evidence that something has passed; the course along which something has moved (the path of a bullet is a "track," not a "tract").
"On" versus **"of"**: "Bracelet *on* the wrist" versus "tattoo *of* the forearm"; **"to"** versus **"of"**: ("Gunshot wound *of* the torso and neck"; "gunshot *to* the left buttock"); see Chapter 9
Hanged: For a suicidal hanging, the past tense of hang is hanged (pictures are hung).
Rupture: Use only with natural disease processes (e.g., ruptured cerebral artery aneurysm)
Use "slight," "moderate," "marked" (avoid: "mild," "significant," "massive").
Use "recent," "organizing," and "remote" to date a pathologic finding (e.g., an acute myocardial infarction).
Use "approximately" for volumes, unless measured.
Use "dead by neurological criteria" (do not use "brain dead").
Use "cerebral infarct or hemorrhage" or "cerebral vascular event" (rather than "cerebral vascular accident").
Use "stenosis" to describe the percent narrowing of blood vessels and "occlusion" for complete blockage.
The phrases "are present," "in shape," "in color," and "evidence of" are often unnecessary and/or redundant, with some exceptions.
Format and sequence for locations of findings/modifiers: surface, side (R or L), body part. Example: "anterior left forearm"
The word "ANAMNESTIC" is used commonly in the final diagnoses outlines when referring to a diagnosis listed as historical/by history, not by autopsy, per se. "Diabetes mellitus" or "schizophrenia" or other psychiatric diagnoses fall into this category.

Two reports documenting the same careful attention to the findings might communicate them in vastly disparate ways, depending on the construction of the report and the quality of the writing. Clumsily described, overly wordy, and poorly organized injury descriptions, with ill-conceived laundry lists masquerading as final diagnoses, often create a "more is less" scenario, leading the reader, particularly a nonforensic one, into a morass of confusing detail that may be evocative of little. Ideally, the FP should be able to review a thorough, but succinct description of an injury or natural finding, close their eyes, and then see it clearly on the decedent's body, in size, morphology, and location, the image in their mind's eye nearly identically matching the one that will ultimately be confirmed with a look at the autopsy photographs. This should be a central writing goal for trainees.

The specific injury distribution pattern characterized, for example, by 10 abrasions and a brow laceration isolated to the prominences of one side of the body, most likely representing a single impact of the body to a flat, resistant surface (planar injury) during a terminal fall, will be completely lost on the reader if the granular detail of the 10 independent abrasions are listed without further describing and highlighting their relationship to one another, of describing "the company they keep." Going one step further and carefully describing a specific and well-recognized injury distribution pattern (i.e., planar injury) will convey an interpretation of what is being observed. Both approaches are comprehensive in their documentation of the actual injuries, but one totally ignores the contextual pattern, or at least fails to communicate that pattern, therefore missing the boat entirely in highlighting the mechanics of these injuries as a whole, instead, giving the impression to an inexperienced reader that there is perhaps a concerning multiplicity of wounds (i.e., multiple impact sites).

In this vein, **the approach to the trauma autopsy report** *requires a specific and well thought out approach to best communicate injuries.* As such, it is imperative to have a systematic approach in both the content (e.g., a mental checklist of what to include in the description of all firearms wounds) and in the reproducible organization of these wound descriptions (standardized headings, describing external followed by internal findings, organizing the findings by body region, and including standard features by wound type, with pertinent positive and/or negative findings, for example).

Appendices A-C of this book include autopsy report suggestions for the content and organization of common final diagnoses lists (Appendix A), a basic autopsy organizational format (Appendix B), and general autopsy templates (adult and pediatric), as well as specific templates for various injury modalities (Appendix C). As is the case for all templates, it is important to point out that they serve only as scaffolding, a start point from which the report should be tailored to the specifics of the case and the injuries involved, rather than as a rigid dictum to which an adherence may well communicate less. Templates are helpful in serving as mental reminders of what to look for and document (pertinent positives and negatives), how to best organize, and how to create a reproducible report structure for training and quality assurance purposes, but they are not and should not be a substitute for common sense and the careful documentation of unique or unusual findings. Never are they intended to encourage a mindless recitation or "canned" text. "Routine is never a substitute for judgment."

Tips on crafting a forensic autopsy report

1. *Avoid using the passive voice:* It may convey an unnecessary and vague uncertainty and/or unwillingness to commit. While sometimes necessary, it is more often a somewhat cumbersome and less communicative writing style. Instead, try to get in the habit of making concise, *declarative* statements wherever possible.

   Avoid: "The gallbladder is without gallstones." Instead, write: "There are no gallstones." Or, "The gallbladder has no gallstones."

2. *Avoid wordiness:* One usually does not need to use phrases such as "is seen," "in color," "in shape," etc. Attempt to be direct and concise.
3. *Avoid redundancy:* Examples: "posterior back," "nape of the neck."
4. *Don't be afraid to use a string of adjectives that modify (and precede) a noun/finding:* Avoid placing these descriptors after the fact in parentheses or in a dependent clause; this creates choppiness that potentially interferes with flow and reading comprehension.
5. *Try to avoid the monotony of a paragraph composed of a string several short sentences that begin with "There is …"* Instead, where logical, attempt to consolidate a series of related findings (e.g., abrasions/contusions), separated by commas, in a clear sentence that flows. For example, instead of several consecutive "there is" sentences, one might write: "There are three 1/2–3/4" irregular, dried abrasions of the lateral left knee, 1/4"–3/8" focally abraded contusions of the right orbital rim, lateral right zygoma, and right chin, and a 6" × 4", vertically oriented, brush-type abrasion of the left scapular back."
6. If you are unsure about what you are seeing, describe it as clearly and objectively as possible, *without* labeling/naming it; but, if you *do* know what you're looking at, so name it, followed by its description—avoiding unnecessary hedging (e.g., if you know you've identified a contusion, write "a 3/4", roughly circular, purple-red *contusion*," not "a 3/4", roughly circular, purple-red *discoloration*").

If you are clearly looking at a stab wound and certifying the death as "Stab Wound of Chest", then, in the body of the report, identify the putative wound clearly as a "stab wound," followed by a description of its features. Describing it as a "slit-like defect," without further qualification, despite knowing what it is, is both illogical and confusing, given the opinion offered in the cause of death. Once again, we must not "deny reality for the sake of objectivity." It is best to name it, specifically, etiologically, if you know what it is, *then* go on to describe it.

When a finding being described reflects an historical event or therapy, as opposed to a diagnosis, a parenthetical factual comment is often helpful and clarifying when placed after the description, such as in, "there are symmetrical, triangular 0.5 × 0.3 cm ulcers of the posterior true vocal cords and submucosa (comment: long-term endotracheal intubation)." This leaves nothing to the imagination and prevents the reader from remaining in a sustained state of suspense.

That said, when a finding is equivocal/unclear/modified by artifacts, etc., one might use such language as "consistent with" or "apparent" or "discernible," to intentionally communicate that uncertainty or ambiguity, and/or use only descriptive language without further offering a diagnosis.

Two apt "Hirschisms" come to mind for such a situation: "Just describe what you see" and "Sometimes, ambiguity is your best friend." While it's very important to take ownership of the things we *can* confidently diagnose, it is equally important, and often unavoidable, to occasionally describe findings, but not name them, recognizing our limitations when we are unsure of what we are observing.

7. We suggest "slight, moderate, marked" rather than "mild, significant, massive" ("Salsa is mild; atherosclerosis is slight"–Charles S. Hirsch). We also suggest "yellow metal" rather than "gold" and "white metal" rather than "silver."
8. For consistency and to avoid confusion for any lawyers/MEs, etc. reading the report at a later time, we advise making an effort to ensure that the letters/numbers that are designated for wounds on the autopsy diagram match the letter/number headings of the same wounds described in the body of the report.
9. *General guidelines for constructing Final Diagnoses lists:* These are the final bullet point diagnoses, followed by associated findings/sequelae. Lengthier and more detailed anatomic descriptions are more appropriately placed in the body of the report, however.

In general, use **Roman numeral (or lettered) headings to organize etiologically specific findings: injuries** grouped by body region in trauma cases and by **disease categories** in natural deaths, followed by their associated sequelae (subheadings), and sub-subheadings, where relevant. Aim to list the etiologically specific **diagnoses in decreasing order of pathophysiologic importance** (common examples of findings not relevant to death, but that should be found "lower down" on the diagnoses list often include such entities as benign prostatic hypertrophy, diverticulosis, uterine leiomyomata, and status post remote appendectomy). Anatomic findings are usually listed before historical or clinical ("anamnestic"/by history) diagnoses, unless the latter are primary or contributory causes or are otherwise important to highlight. Avoid *exhaustive* scene information in the Final Diagnoses lists.

10. *Write the body of the report in paragraphs, not in phrases, bullet points, lists, or outlines.* Outlines are reserved for the consolidation of conclusive information on the first (or last) page of the report (the "Final Diagnoses" list). Admittedly, certain lengthier categories in the body of the report (e.g., clothing, tattoos) lend themselves nicely to itemized lists and may be easier to read in that format. "Let common sense prevail."
11. *All injuries and their direct sequelae, external and internal, are best separated from the rest of the nontraumatic findings and therapies and systematically described* (external findings first, followed by internal) under a single "Injury" heading, further organized by injury modality, then further by body region (head, torso/trunk, and extremities), followed with a statement at the end of this section, such as, *"These injuries, having been described, will not be repeated,"*
    Avoid "mixing metaphors" such as, placing postmortem changes under the general external or internal examination sections, etc. (see **Appendix B** for suggested report organization). For example, if the aorta is appropriately described as having a red-orange intima under the "postmortem changes" section, but is otherwise unremarkable, it should be described as "normal" or "unremarkable" under the "internal examination" section, the postmortem discoloration notwithstanding (and already described). The inference with this framing is that the aorta is *otherwise* unremarkable. All noninjurious headings, including "Therapeutic Interventions," provide a space for clear descriptions of both objective observations and pathologic processes that are not directly caused by or otherwise resulting from the injuries or postmortem changes.
12. *Check all names and dates in the report:* Check the name against the officially identified one, especially in homicides, where aliases are occasionally encountered.
13. **With the extremities**, it is best to speak in terms of **proximal and distal**, not superior and inferior, as they can move in space and make the latter designation uninterpretable. If you lift your arm or leg up, what had been "inferior" may now be "superior." By contrast, proximal and distal never change with movement because they are terms that are used in relation to the fixed torso. Do not measure extremity wounds from the midline for the same reason; it's neither relevant nor reliable as a measurement, and doing so may well misrepresent the location of the limb relative to the body's midline at the moment of injury occurrence. For the supinating and pronating **forearm**, we suggest designating **dorsal/volar** and **ulnar/radial** as landmark descriptors. For the **arm** (upper arm), **lateral and medial** suffice, as they are fixed (no supination/pronation). Landmarks such as the axilla, the antecubital fossa, the elbow, triceps/biceps/deltoid regions, the groins, the knees, and the ankles may be additionally helpful visual points of reference when describing findings of the extremities. Finally, palms and soles should be specified.

With respect to the order of descriptors, we suggest the following sequence: *vertical location on the body, surface (anterior/volar, lateral, posterior/dorsal, or medial), side (right or left), then body part.* Example: Distal lateral right thigh.

14. The word "Anamnestic" (or equivalent, such as "by history," "clinical," etc.) can be used in the final diagnoses outlines when referring to a diagnosis listed as historical/by history, not by autopsy, per se. "Diabetes mellitus" or "schizophrenia," or other psychiatric diagnoses, fall into this category.
15. *Attempt to remain nimble in report writing:* Create extra headings and qualifying statements where needed (funeral home activity, autopsy modified for religious purposes/minimally invasive autopsy, organ and tissue donation/procurement, and previous hospital autopsies). This is where thinking outside of the template is best illustrated (see also Chapter 5, The Forensic Autopsy, for suggested additional headings and phraseology).
16. While more a matter of style than substance, if a complex cause of death statement is particularly long and cumbersome, by necessity and despite one's best efforts, it may well require several "due to's" and become, at best, monotonous to read, but, at worst, confusing. *Keep in mind that there are alternatives to the standard "due to" parlance on death certificates. Phrases such as "related to," "complicating," or "following" offer just a few examples.*

Beyond the communicative information contained in autopsy reports and death certificates, written correspondence and documentative case notes require similar thoughtfulness and succinctness, keeping in mind that all are potentially discoverable (i.e., for legal purposes). Memorializing important conversations in a case note, particularly those that include relevant additional facts or processes relating to the case, may prove crucial for any number of reasons down the line. The forensic pathologist will field thousands of phone calls throughout the course of a career; remembering the details of all represents a virtual impossibility. It is for this reason that documentation is so important. While the adage, "if it's not written down, it didn't happen" isn't actually true, the limitations of the human memory can make it seem that way. That said, and importantly, substantive email discussions regarding the details and theories of a death, particularly a homicide, should be expressly avoided for a variety of reasons, not the least of which is the time-consuming burden of having to later locate and retrieve all of those emails for discovery requests. While testimony and meeting scheduling is a perfectly innocuous topic to communicate through email, a phone call or an in-person meeting is a much more advisable communication forum for all other case discussions. Finally, and needless to say, professionalism in all emails and public posts is requisite and expected, but this is not unique to the practice of forensic pathology. Let common sense prevail.

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