



FORENSIC MEDICAL EVIDENCE

Presented by:
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Foley's List

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Setting the Scene:

Q: "Doctor, before you performed the autopsy, did you check for a pulse?"

A: "No."

Q: "Did you check for blood pressure?"

A: "No."

Q: "Did you check for breathing?"

A: "No."

Q: "So, then it is possible that the patient was alive when you began the autopsy?"

A: "No."

Q: "How can you be so sure, Doctor?"

A: "Because his brain was sitting on my desk in a jar."

Q: "But could the patient have still been alive nevertheless?"

A: "It is possible that he could have been alive and practicing law somewhere."

Introduction

- Making sense of a forensic pathologist's report
- Developing a case theory
- Tips in Court

Making Sense of a Forensic Pathologist's Report

- Define your terms
- Understand basic anatomical language
- Correlate every photo with a description
- Sight everything that the pathologist relied on
- Are there inconsistencies?
- Call the pathologist!

Making Sense of a Forensic Pathologist's Report

- Define your terms
 - Go through the report line by line and look up every word you don't know
 - Wikipedia and a pencil!
 - Annotate the report
 - Pathologists aren't google and court time is precious
 - Reserve important terms for explanation

Making Sense of a Forensic Pathologist's Report

- Understand basic anatomical language
 - Medial, lateral, distal, proximal, dorsal, ventral, midline etc
 - Laceration, incision, abrasion etc
 - Reserve important questions and explanations for the expert

Making Sense of a Forensic Pathologist's Report

- Correlate every photo with a description of an injury or finding
 - Are there any photos of injuries that are not described?
 - Are there any injuries described that are not photographed?
- Are there potential explanations for injuries in the brief?

Making Sense of a Forensic Pathologist's Report

- Sight everything that the pathologist has relied on
 - MRI/Xray
 - Histology, toxicology

Making Sense of a Forensic Pathologist's Report

- Are there inconsistencies or mistakes?
 - Use them or bank them

Making Sense of a Forensic Pathologist's Report

- Call the pathologist!
 - They are super interesting to talk to
 - They can alert you to where the icebergs might be
 - Build your credibility
 - Get a sense of where there might be some potential for uncertainty

What Does a
Case Theory
Look Like?

What Does a Case Theory Look Like?

- It depends
- What are your instructions?
- Some common issues:
 - Minimising the cause
 - Disaggregating the mess
 - Is there a story hidden in the evidence?
 - Causation?

What Does a Case Theory Look Like?

- Minimising the cause:
 - Reduce the number of discrete applications of force
 - Reduce the severity of the force required

What Does a Case Theory Look Like?

- Disaggregating the mess:
 - Lethal v Non-lethal injuries
 - Injuries over time
 - Direct and indirect trauma
 - Pre, post and peri mortem injuries
 - Timeframes: seconds, minutes, hours

What Does a Case Theory Look Like?

- Is there a story hidden in the evidence?:
 - Defensive injuries;
 - Offensive injuries;
 - Injury patterns and possible causes;
 - Obviousness of harm

What Does a Case Theory Look Like?

- Causation?
 - Contribution of other factors?

Tips in Court

Tips in Court

- Attacking credit
- Two useful approaches
- What to do with inconsistencies and oversights
- Directing the play

Tips in Court

- Attacking credit
 - Rarely helpful

Tips in Court

- Two useful approaches
 - Can you exclude this reasonable hypothesis that is consistent with the defence case theory?

Tips in Court

- Two useful approaches
 - Can you exclude this reasonable hypothesis that is consistent with the defence case theory?
 - Establish all of the assumptions and dependencies that the opinion was based on, and then furnish a new fact.

Tips in Court

- Inconsistencies and oversights
 - If you identify a mistake in a report, consider if you need to exploit it
 - Accrediting vs discrediting an expert
 - Do you need them to be fallible?

Tips in Court

- Directing the play
 - If it's a fact that you intend to close on, or will form a key part of a plea offer, put the proposition in the most attractive form to the witness and see if they will adopt it.
 - Simplify key ideas and express them in terms that your audience will relate to, but it's only evidence if the expert agrees with the explanation.

Some handy resources

- <https://medicalsciences.med.unsw.edu.au/sites/default/files/soms/page/ANAT/AnatomyGlossary.pdf>

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