

Excerpts From Letters to Koch and Baden's

Following are excerpts from letters by the city's Health Commissioner, Dr. Reinaldo A. Ferrer, and the Manhattan District Attorney, Robert M. Morgenthau, to Mayor Koch regarding the appointment of Dr. Michael M. Baden as Chief Medical Examiner. Each letter is accompanied by excerpts from Dr. Baden's replies to the Mayor:

By Dr. Ferrer

Dr. Baden has exhibited poor judgment in many instances, including: In January 1979, he requested that Beth Israel Medical Center disclose all records regarding a former patient in its Methadone Maintenance Program. Compliance by Beth Israel would have violated federal law.

Regarding the death of Arthur Miller (M.E. K783279), Dr. Baden issued a report on the evening of June 14, 1979, prematurely and without sufficient data.

On Friday, Feb. 3, 1979, following Governor Rockefeller's death, Dr. Baden, in his role as invited speaker on "The Functions of the Chief Medical Examiner's Office" at the grand rounds at the Lenox Hill Hospital, focused his presentation on the Governor's death. He included a number of details not previously presented in such fashion as to indicate that the Governor had died during sexual intercourse."

Dr. Baden has demonstrated a lack of ability in administering his office.

By Dr. Baden

Commissioner Ferrer states that I requested that Beth Israel Hospital violate Federal laws of confidentiality of a former patient and that I improperly pursued this request "finally with-



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drawing it only in the face of the hospital's persistent refusal." The charge is wholly false. The facts are as follows:

The decedent was a 46-year-man found dead Oct. 17, 1978 under suspicious circumstances and autopsy determined that he had died of a rupture of the spleen of uncertain origin. The Manhattan deputy chief medical examiner who performed the autopsy was unable to determine if this rupture was from natural disease or as the result of homicidal trauma. He therefore, in the normal and routine course of such death investigation, sent, on 11/16/78, a form letter requesting copies of prior hospital records.

Regarding the death of Arthur Miller, Commissioner Ferrer states that "Dr. Baden issued a report on the evening of June 14, 1979, prematurely and without sufficient data" and that I changed the contents of the report. Again the facts are quite to the contrary.

Mr. Miller was pronounced dead at 6:25 P.M. on June 14, 1978. The Brooklyn deputy chief medical examiner, responding to the concerns about the death, performed an autopsy later that same evening and determined the cause of death to be "Asphyxia associated with laryngeal trauma. Sustained while resisting a rest. Pending further study and police investigation." At no time was that diagnosis changed by this office or by that deputy or by me. To the best of my knowledge I made no comments to the press relative to that death.

Commissioner Ferrer states that I perpetrated a "serious instance of unprofessional conduct" by improperly discussing at Lenox Hill Hospital grand rounds Feb. 3, 1979 Governor Rockefeller's death "in such a fashion as to indicate that the Governor had died during sexual intercourse." I never said any such thing."

By Mr. Morgenthau

Dissatisfaction with the Medical Examiner's Office in general and with Dr. Baden in specific is very widespread among the assistant district attorneys who handle homicide cases. The complaints are varied, but most have to do with the sloppy way in which evidence is handled (important evidence was lost in two cases); the unavailability of Dr. Baden and his staff to prepare cases for trials and grand jury presentations; their rudeness toward assistants; and their cavalier attitude about their responsibilities in connection with the trial of cases. I describe below a few examples:

1. *People v. Levine*. The defendant was indicted for killing Miriam Wein-

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feld. Several important pieces of evidence were recovered — the deceased's fingernail clippings, her dress stained with blood; a blue towel, a knife, and a telephone cord (which apparently was used in the murder). All the items were lost.

Perhaps as distressing as the loss itself was Dr. Baden's attitude, which was characterized by the assistant as "unknowing and uncaring": about the significance of the loss. When the assistant came to Dr. Baden's office to discuss how to salvage the case in light of the loss of evidence, he was, not so politely, told to leave.

2. *People v. Hayes*. Again, in this murder case, several important pieces of evidence were lost (two bloody knives, a blood-stained pair of pants and a blood-stained piece of cloth). These items were logged into the Medical Examiner's Office on Oct. 6, 1978. Several times in November and December 1978 and January 1979, the assistant district attorney and the detectives on the case contacted the Medical Examiner's Office to learn the results of the tests that were to be done on these items. Each time they were told that the tests had not yet been performed. On Feb. 26, 1979 the assistant was told by the serologist that after searching the Medical Examiner's Office, he and his staff could not find any of the evidence.

By Dr. Baden

Mr. Morgenthau's letter magnifies the natural frictions that develop in this high pressure system in which we work with mountainous problems. Our roles are different. My office ought not to co-opt the District Attorney any more than the district attorney should co-opt us.

Let me respond to Mr. Morgenthau's charges:

1. *People v. Levine*: Mr. Morgenthau's statement is based on misinformation. The decedent was found nude at the scene of the death and was

brought to the Medical Examiner's Office nude and was received by the autopsy physician nude. No item of clothing and no weapons were taken by the Medical Examiner from the scene.

I take strong exception to Mr. Morgenthau's adoption of his assistant's description of my attitude as "unknowing and uncaring about the significance of the loss." Such a charge by a governmental colleague who blindly accepts a subordinate's glib characterization is shocking. I had dozens of hours of conferences with medical examiners, mor-

tuary and serologic personnel about this particular matter.

2. *People v. Hayes*: In April I advised Mr. Morgenthau's chief assistant by telephone that the evidence had not been located after an extensive search of the serology laboratory and storage areas and appeared to be lost, but that further searching would continue. Mr. Morgenthau's statement that "Dr. Baden did not evince notable distress at the loss" is again outrageous and surely unprofessional. Mr. Morgenthau is a lawyer, understand, not a hearsay telephone psychiatrist.