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法医法学

主编　王克峰

中国人民公安大学出版社

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序

在科学大时代滚滚浪潮的涌动下，公平、公正、正义、自由的法律价值业已得到社会的确认，平等关怀、保障人的合法权益的观念日益深入人心。我国法庭的刑事审判方式实行了前所未有的重大改革，从纠问式走向了控辩式，鉴定人要出席法庭举证。从某种意义上来说，这是一次根本性的变革，不仅涉及审判阶段诉讼程序的变化，而且将影响到人们思想观念与伦理道德评价的深层变革。

法律规定诉讼举证的一大重要原则是谁主张、谁举证，所有的诉讼证据都要在案件公开审理的过程中，在法庭上当众出示、展现。鉴定人要出席法庭，当庭宣读鉴定结论。鉴定人的鉴定结论，也要以接受控辩双方的辩驳、质询的方式进行质证，或者由法官以询问的方式进行审查，此即为鉴定人出庭举证程序。审判人员听取了公诉人、当事人和辩护人、诉讼代理人的意见，经过核实，证据被法庭认证之后，鉴定证据（鉴定结论）方能作为判决的基础。

《中华人民共和国刑事诉讼法》第158条规定："法庭审理过程中，合议庭对证据有疑问的，可以宣布休庭，对证据进行审查核实。人民法院调查核实证据，可以进行勘验、检查、扣押、鉴定和查询、冻结。"

《中华人民共和国刑事诉讼法》第156条规定："证人作证，审判人员应当告知他要如实地提供证言和有意作伪证或者隐匿罪证要负的法律责任。公诉人、当事人和辩护人、诉讼代理人经审判长许可，可以对证人、鉴定人发问。审判长认为发问的内容与案件无关的时候，应当制止。审判人员可以询问证人、鉴定人。"

《中华人民共和国刑事诉讼法》第159条规定："法庭审理过程中，当事人和辩护人、诉讼代理人有权申请通知新的证人到庭，调取新的物证，申请重新鉴定或者勘验。法庭对于上述申请，应当作出是否同意的决定。"

《最高人民法院关于执行〈中华人民共和国刑事诉讼法〉若干问题的解释》第144条规定："鉴定人应当出庭宣读鉴定结论，但经人民法院准许不出庭的除外。鉴定人到庭后，审判人员应当先核实鉴定人的身份、与当事人及本案的关系，告知鉴定人应当如实地提供鉴定意见和有意作虚假鉴定要负的法律责任。"

想来这样清纯平实的几条法规，的确深意隐隐。它的威力对人的精神心灵或振聋发聩，或潜移默化，恰如移动群山一样雄奇壮观。如果不曾置身其中血肉相连，那寂静的花开和流动的圣洁终究也还是别人的风景。

在当今的时代，只要是稍有教化的人都会晓得鉴定证据对于案件审结的内在关系。法医学鉴定证据，是鉴定证据之中数量最多的一种。无论是亲权鉴定、个体识别、自然死亡、医事诉讼，还是凶杀、急死、谋杀等案件所提供的微观物质证据，都是验证案情、明辨是非、识别真伪、确定性质、依法明断无可替代的法律证据。法医鉴定人在法庭上的举证，在证据锁链中历来在人心的天平上是信度最大、证明力最强的证据之一。举证成功，

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石破天惊，千锤打锣，一锤定音，常常是法庭上的一大亮点。法官采信了确凿的证据，自然会不枉不纵，公正处置，产生良好的审判效应。

毋庸置疑，法医鉴定人出庭这一法律事实，是我国证据制度发展史上划时代的一件大事。其所以是大事，大就大在它关系到公民和法律尊严的崭新社会需求：在民主法制的原则下，公众对法医鉴定的科学设备，对法医鉴定机构的管理，对法医鉴定人的素质条件，都怀着新的企盼。法医学科学技术鉴定，不仅在鉴定证据展现时是公开的、合法的，而且在鉴定运作的环节上也应当信守、遵从鉴定人崇高的道德理想和严谨的科学精神，这对法医学证据鉴定几乎是一个全新的课题。法律赋予了法医鉴定人权利，同时也规定了其应当承担的义务，这是一种崇高的社会荣誉。对这种权利应当加倍珍重呵护，哪敢懈怠，哪敢轻漫。这是一种责任，这是一个托付，道德良心，法重如山。我国的法医鉴定人完全都是国家公设的职业鉴定人，受事业推挤、磨炼，许多人内心里都曾经深深受到过感动，都曾经用生命体验做出回应。但是，为什么法医鉴定人“在法庭上总是觉得寸步难行”？这流露出了其内心尴尬处境的忧思。心境沉重并非全在鉴定人自己，更多的是在法庭上所有成员目睹了从对证据的对抗、辨驳到认同、折服的全部过程。心理流程反映每个个体的总体素质，不是在演练中一时可以补救的。举证、质证是整个法庭上共同关注的一个中心。“举证需要学习、需要钻研、需要切磋、需要反复实践、需要考验、需要总结经验、需要批评帮助、需要阅读、需要讨论、需要提高、需要顿悟……总之，是需要用一切手段打磨和精耕细作的艺术。”案件需要法医鉴定人真正谦恭、勇敢、真诚地展示证据。酸腐作态的学术面孔，深刻而艰涩的理论表达，全然都不和谐，明白、通俗地让所有的人都能清楚就是宗旨。当今的情况是：举证完满的只是一部分，出庭不成功的却也不少，有些案件十次八次异地鉴定，尸体冷藏、嫌疑人关押，审结久拖不下。其原因是多方面的，法医鉴定人成熟的程度只能说是原因之一。此外还有更多的原因，诸如科学研究鉴定使用的仪器不足或陈旧，委托鉴定证据移送不完好，数量不充足，证据收集保全移送不安全、合法，委托鉴定目的要求不合理。当然控辩双方的对抗、主张是一个方面，法官对法医学鉴定的认知能力和评估的水平也是十分重要的一个方面。理想与现实的巨大反差，反映了我们在司法鉴定制度建设上的落后，而司法鉴定制度建设上的落后，则折射出我们在学术理论上的滞后。

如果将上述种种原因除外，法医鉴定人在成才阶段还有知识准备一味地过于专门化和“单向度”的倾向。这不能不认为是深层性的症结所在。法医鉴定人在法庭上是一个“科学证人”，应当是有证高悬，言之凿凿，尊重事实，信守科学，面对无论来自何方的质询都能应对如流，明白晓畅一一阐释。要能举重若轻，把证据展示成功，就要求法医专业在校培养的学生既有科学素养，又有人文精神；既有专业知识，又有健全人格。从源头做起，才是惟一的良策。法医本科专业学生在校长达五年的时间，在浩瀚知识课程设置的内部连接点上，应当取舍的学问很深，究竟孰轻、孰重，怎样忍痛割爱，调整编排取舍？如若再不迅速扭转局面，将会使这个专门研究法律医学证据的特殊短线专业失去自己的特色，毁坏了生存发展的去路。

法学是法医学专业的主干课程，不但学时不足，教学的目的性以及与基础医学临床医学怎样连接的这一难点，始终是相融共建的课题。因为“知识”并不就是“学问”，怎样将思想政治素质、法的思想、法的精神在所有法医学专业知识课程中一以贯之，恰恰是法

医学专业的“脊梁”和“灵魂”。多学科共建在连接点上迸发新知，讲授法学课程的专家，也要对法医学专业的一些基本知识有所通达。渗透是连接嫁接的前提和条件。出庭的经验告知，道德教育、政治思想教育必须摆在素质教育的首位。法学课程必须增加，从教育方针和培养目标上做起，比如证据学、司法鉴定学、鉴定心理学、鉴定科学伦理学、鉴定语言学、鉴定礼仪学、法制史、与鉴定相关的实体法和程序法，都应当增设或加大课时量。课程设置关系到法医鉴定人的培养目标和学科发展以及法制建设的需求，这同时也是法医学素质教育的主题。

法医学教育改革与司法鉴定制度的立法滞后，只是一种现象。形成这种社会现象的直接原因，是对法医学的社会功能和科学价值认识不到位。在人类远古与近世遇到的无数震世灾难中，法医学总是在水火之中给社会增添了福音。这是不争的事实，过后人们往往却四顾茫然很少再去留意。短线专业的学科，看来加强科学研究和深入普及宣传是不可忽视的。在这次编写这本教材时，遇到的第一个“瓶颈”问题，就是如何对法医学进行定位。它究竟是一门什么样的学问，其说纷纭，界定种种。为此编审委员会多次研究讨论，一次比一次深刻。拨正世世代代对法医学世俗的偏见，越过久已锁定的樊篱，确也不是轻而易举的事情。真比唤醒远古沉睡的冰川还要艰难。道理无论怎样畅达，偏见的影子总是挥之不去。正如列宁指出的，人本主义“只是关于唯物主义的不确切的肤浅的表述”,① “要认真地认识事物，就必须把握、研究它的一切方面、一切联系和‘中介’。”② 人类尽管有敏感的感觉器官，有思维睿智的大脑，但无论如何做不到这一点。心理上发生效果的最恰当时刻（Psychological Moment）反倒往往会是强化既定认知内因的一大条件。

在五光十色的世界，人是主体。法医学正是研究“关于人的科学”的一门学问。它不仅研究文化的人和体质的人，它更重要的是研究人的生命价值和人的社会价值。“人的本质并不是单个人所固有的抽象物。在其现实性上，它是一切社会关系的总和。”③ 法医学研究的对象和内容决不仅仅是医学科学与生物学科学技术所能囊括得了的，而应当包括人的肉身、人的种属、人的生命、人的社会角色、人的权利与法律地位、人的精神健康状态与行为能力、人的生理行为和人的病态行为、环境社会安全、重大灾难事件预防处置，乃至人的死亡原因、人身伤残赔偿和临床医疗涉讼事件评价等等。

按照科学划分的一体性原则，科学与人文，本来就是结合在一起、无法严格分割的知识整体。在新知涌动的科学时代，回过头来去看，法医学这个学科，几乎与现代自然科学和社会科学的许多学科在不同程度上都有纵向横向的交叉互补关系。在知识创新文化综合的时代，人们研究多种学科与法医学科交叉融合狭窄地带的新知识、新内容、新技术、新方法来应对社会公平观念的普遍渴望，回答法律与社会向法医学领域提出的新问题、新要求。例如，在多学科综合微观研究上拓展了“创新工程”，如血液、精斑分离的标准化鉴定分析，电镜、电泳细胞 DNA 扫描破译，计算机重建个体特征识别，等等。这些内容都是须待长期研究的新领域。此外，航天病理学的出现，宇航飞行失事法医学鉴定，海难事件的法医学鉴定，水火灾难的法医学鉴定，死亡学说特别是死亡管理制度对脑死亡、安乐

① 《列宁全集》第三十八卷，第 78 页。

② 《列宁全集》第二卷，第 453 页。

③ 《马克思恩格斯选集》第一卷，第 18 页。

死、器官移植、精神卫生的立法和医疗鉴定原则，试管婴儿事实出现所引发的法定财产的继承权问题，行为能力与遗传疾病的鉴定，基因破译确定亲生权属，交通死伤，医事赔偿，行为能力与控制能力的鉴定，等等。所有这些，既是挑战，也是机遇，都是上个世纪80年代以来法医学科研教学与实践的经验总结与创新研究，是在世界法医学证据发展史上令人振奋的重大贡献。

上述这些事实，一再向人们表明，法医学是研究法律医学证据的一门科学。如若仍然依旧认为法医学是“研究解决人身伤亡和涉及法律的各种医学问题的科学”，则很难说不是一种讹误或错识与偏见。对一门科学从深层概念上准确的认知与把握，直接关系着这个学科发展的未来，历史上人们错误认识的恐怕远不止于对法医学的界定。诚如一位资深的医学教育家在讨论界定医学科学的定义时所说的那样，他说：“现在人们通常认为医学是自然科学。其实约100年前，著名的病理学家魏尔啸（R.Varchow）就说过医学本质上是社会科学。有些疾病甚至完全是由于社会的原因引起的。只是医学本身以自然科学为依托，特别是近几十年，大量的高科技成果被引入医学领域，使医学更增加了自然科学的色彩。”因此，近几年为适用医学教育改革，对医科大学的医学生和在职的医师都开设了社会学、医事心理学、医学伦理学、法学和人际交往方面的课程。

认识学科的研究对象、科学地位、运用价值，把握学科的宗旨和本质属性，构筑一个严谨的科学概念，犹如置身景山却可以从绿树葱茏的岗峦俯瞰整个古老新朝的北京，这是一个制高点。有人说“法医学是一个看似清浅，易学难工的行道”，其实是“学也不易，工也不易”。要攀登读识它的制高点，没有前人苦心孤诣的厚实积淀和成熟的历史机遇，那是不可想像的。中国的法医学远在春秋战国时代已经峥嵘绽露，在审断案件中步入了历史殿堂，但在数千年的无数嬗变中终久未能逾越“仵作”检验的程式。西方各国沿用了中世纪英国兴起的“Coroner”检案制度，直至如今。美国公设的法医鉴定机构除了法医局（Chief medical Examiner）和警察法医局（Sheriff medical Examiner）之外，还有验尸官办事处（Office of the Coroner）。尽管验尸官办事处里面都是各学科的专家学者在执事，当年的验尸官早已不复存在，但是验尸官的名称却还牢牢地保留着不肯弃置。这种社会历史现象实在耐人寻味。“Coroner”一词来源于为皇室服务的人，用传统的视角着眼，首先历史地赋予了一分尊荣，Coroner的人格地位应当视为尊贵的人，Coroner在全社会享有至为遵从的信誉，上至贵族下及平民，伤残生死情事如何处置认定都以Coroner的勘验为准。从另一方面看，由于他们的财产占有状况与教育程度低下，这样在事实上又不能不被习惯势力视为轻贱，从而沉入社会的末流。东西方社会形态文化传统差异如此之大，但中国的“仵作”制度与西方的“Coroner”制度则有诸多惊人的相似之处。

这一惊世骇俗的社会现象，昭示了人类在对待生与死的观念上普遍存在冥顽不灵、讳莫如深的弱点，以及既信守“生死同重”，也还说“重死重于生”的矛盾心境。无形的习惯势力明显的指征是对于验断人，既有信托遵从，也有轻漫睥睨。一条脚印深深浅浅，历史印记留给了久远。

近代世界科学技术发达经济领先的国家，关于法医专业人才的培养完全实行毕业后教育制度（Graduate Education），在大学本科专业设置中从来都未曾设置过法医学专业的本科教育。接收培养人才的档次远远超越了本科教育的几个台阶。这些国家多半在法律上就明确规定，法医鉴定人享有科学证人的法律地位，因而人才配置时，不但遴选条件要求严，

成才周期长，而且起步本身就很高。成才的渠道有三条：

第一条渠道是：先接受医学院本科教育，毕业取得M·D（Doctor Medical）学位，再经过2至3年医学专业的深造，取得硕士学位（Master Degree），或是医学院毕业后，专门攻读5年病理学取得医学博士学位（Philosophy Degree），然后再经过法医专门知识的学习：学习24学时死亡学理论，做24个尸体解剖的案例，出5个犯罪死亡的现场。其余的时间是对细菌、生物化学、火器、牙科、血清、人类学、痕迹学各分科知识的学习。只有经国家考试合格，才有资格进法医局做法医鉴定人（Legal Medical Expert）。

第二条渠道是：进入联邦调查局（Federal Bureau of Investigation），国防部美军病理研究所（Armed Forces Institute of Pathology），纽约、洛杉矶和芝加哥法医局这些更具权威性的科研实战部门进修法医学。凡来报考进修的人员，都是已经从医学院毕业后，做过住院医生有了一定的临床经验，又经过5年病理学专业的深造，在全美病理学会上宣读过病理学科学论文并取得病理学博士学位的人员。他们修业期满之后考试合格到法医局做法医鉴定人。

第三条渠道是：由于法医学人才培养专门化“精尖”和“单向度”倾向过重，影响了鉴定人的来路，人才来源艰难，不利应对社会需求，因此1970年联邦政府又有新的微调，规定“任何一个病理学家都可以成为法医官”，这样就大大拓宽了法医人才的来源。病理学家虽然没有经过国家法医学的考试，可是他们在医学基础研究和临床病理学检验这些领域已经达到了一个相当的高度，并且取得了病理学博士的学位（Pathologist Doctor），并参加国家病理学的考试。这部分人才的进入壮大了法医学的队伍，深化了法医学深层知识结构的内容。

现代世界著名的一些法医学家普遍认为，法医学在上个世纪中后叶发展的显著特点是朝着学科分化与综合两极走去，比如法医人类学，法医血清学，法医毒物分析学，精神疾病犯罪责任能力划分判断，死亡原因鉴定，法医临床学，交通、航海、航天失事法医处置，法医爆炸与火灾救援勘察，这些领域既是法医学综合的知识组成，各自又都朝着学科的专深方向分化发展。这种观点认为：“现代法医学的这一称谓，几乎就是直指病理学而言。因为学科交叉的若干断面都朝着法医学，不论是哪一个断面都不等于那个学科的整体，学科交叉连接点上的法医学家，在各学科各种专业的知识的深度广度上，很难超过原有本学科的专家。因此，一个法医学家想要用在自己专业范围之内所掌握的知识和技能解决所有的问题，无论如何是不可能的。解决重大疑难问题不能没有多学科专家的合作。现代所说的法医学家，只能是一个出色的法医病理学家（Forensic Pathologist），这是最实际而又最恰当的。”

与此相近的另一种观点认为：“现代法医学就是直指精神病学与病理学的相加（Forensic Medicine = Psychiatry and Pathology）。”

我们的国家有自己的国情。一个泱泱大国，解放前全国仅有的法医学专家只不过几十个人，科研、教学、检案的体系从来都没有建立起来。法医学这个学科本来就是一个特殊短线专业，既是一个前沿性科学又是一个应用型的后来学科。它与自然科学、人文科学的发展，特别是法学的文明进程是紧紧关联、并行不悖的。我们不难设想在解放前夕中国法医学在人才资源上是怎样的一种失衡状况。

1949年中华人民共和国成立后，为应对全国司法改革及审查大批案件急需，中央委

托最高人民法院华东分院的上海法医研究所、南京大学、沈阳的中国医科大学培养了三百多名法医专业人才。他们学成到职以后，阅卷审查、开棺检验、验伤验毒、血迹鉴定、现场复查，凭仗法医学鉴定的确凿物质证据，为长期关押、死因不明、久悬难决的冤假错案平反昭雪，在建国之初的紧要时刻实实在在为人民做出了贡献；为刚刚新生的政权，在国人心中的信度增添了亮点。司法机关分清了是非，平雪了冤假，老百姓把毛主席、共产党比作不落的太阳。

建国之初法医学确实受到了社会的普遍关爱，不但政法部门的干部都要学习法医学的知识，医学院校、政法院校也都建立了法医学教研室，把法医学列为必修课程。新闻媒体对法医学知识的宣传也十分重视，报纸广播常有普及知识宣传，许多人都晓得法医学检验鉴定案件非常重要。然而，历经十年动乱，法医人才多人转岗，或离或退，这样一个运用价值巨大、学术上曾异常繁荣的学科，再次面临断档危机。这批人之后再无来者，这是一个危险的信号，“高等教育中居然没有法医学专业”，法医人才格局失衡，导致法医学证据鉴定跌入了“人才黑洞”。

1983年，最高人民法院、最高人民检察院、公安部、司法部、教育部、卫生部在太原晋祠召开了“全国高等法医专业教育座谈会”。这次会议是国家对法医学这个短线专业建设的抢救性会议。会议规模之大、规格之高、论证决策之充分和圆满，在中国高等法医学专业教育发展史上是前所未有的。这也是法医学证据鉴定业务建设上起死回生、决定乾坤的会议。与会的三百多位多学科资深专家回顾并总结了建国以来法医人才培养教育的历史经验，论证了国家法医鉴定人才的预测需求，确定了我国现代法医专业教育的规格和模式；会议决定在十所医科大学成立法医学系，招收五年制本科学生，毕业时授予学士学位；同时规定将法医学列为全国高等院校医科学生和法学专业学生的一门必修课程；并且，要在全国政法部门的干部中进行法医学知识普及教育，特别是对鉴定人的选择和鉴定证据评价的理论知识教育；把保护现场、保全实物证据，作为精神文明素质教育的一项重要内容，向全国人民广泛深入地宣传动员；要求在医学界、法学界、教育界深入贯彻会议的精神，为我国的法制建设多做贡献。凡此要点，都一一写入了“四部两院”的《纪要》，发向全国。

在晋祠会议之后，我国法医学的硕士、博士学位教育和博士后流动站教育也相继建立。法医本科毕业生中，一批走出国门攻读法医学博士学位的学生不少人都学成归来。若不是国家在重要的历史时刻，采取了如此有力的措施，培养出一万多名高级法医学人才，我们可能难以维持近年来法医学教育的学术繁荣，我国法庭上法医学证据鉴定的出庭状况，必然将会是另一番景象。

法医学教育尽管有了这么大的规模，有了这么高的教育层次，但关于法医学教育学科重组、合理构建的教育改革却迫在眉睫。教育部在1998年提出的《面向21世纪教育振兴行动计划》中指出，面向21世纪的教学内容和课程体系改革计划是它的重要组成部分。各教育层次教学内容和课程体系改革计划要取得的实质性成果之一是编写出版一批高水平、高质量的“面向21世纪课程教材”。国家把“教材改革”摆在了教育改革重中之重的重要位置，要求21世纪大学新教材应当成为如下精品：一是与传统课程教材相比，体系创新、内容更新、教法革新力度大、具有显著导向性和创新性的教材，或新创课程教材。二是对传统课程教材的体系和内容进行创新、更新和整合形成的教材。三是在注意保持传

统教材的品牌特色的基础上，结合新世纪教改的要求，加以修订而成的教材。

《法医法学》教材是法医学专业在80年代被国家高等教育目录列入设置后，教育部几度着手组织编写的，但终因临床医学立法、法医学鉴定科学立法、司法鉴定机构与鉴定人员管理以及整个鉴定制度建设滞后诸因素制约而搁浅。直至1995年6月27日至7月2日在成都召开的第二次“法医学专业教材编审委员会会议”将其再次列入编写计划，已历时数年。

人类的任何一门学科，其基本知识和基本技能只是该学科的冰山一角，作为该学科基础和精髓的则是该学科所要求的一种精神。我们企盼《法医法学》进入教程后，能使学生在掌握该学科的基本知识和基本技能的同时，感受和领略到该学科的精神，并从中受到法学的熏陶和垂范。

在编写过程中，中国人民公安大学、北京市高级人民法院、中国法医学会、中华医学会、华西医科大学、西安交通大学、华中科技大学同济医学院、公安部物证鉴定中心给予了关爱支持；尚勤阁教授在百忙之中逐字进行了审读，并提出若干宝贵意见，谨此致谢，以达悃诚。

王克峰

2001年12月

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Preface

Under the surge of the great science age, the law value of being fair, impartial and just has been acknowledged by society, and the idea of equal solicitude and protection of legal human rights has enjoyed immense popular support. In our country the criminal trial has experienced great changes, court debate substituted for court inquiry, the expert witness required to appear in court to put to the proof. In some sense this is a fundamental change, which involves not only the change of procedure but also the change of ideas and ethics.

About putting to the proof a major principle provided by law is that the person who advocates it shall put to the proof and in the process of open trial, all the evidence shall be displayed in court. The expert witness is required to appear in court and read out the conclusion, which shall be proved through argument and questioning between the two parties, or examined by the judge through interrogation. This is the procedure for the expert witness to appear in court to put to the proof. The different opinions of the prosecution, litigant, defender and law-agent have been heard, and the evidence has been checked and legalized by court. Only then the evidence (conclusion) is established.

Criminal Procedure Law of the People's Republic of China provides in Article 158 that during a court hearing, if the collegial panel has doubts about the evidence, it may announce an adjournment, in order to carry out investigation to verify the evidence and that when carrying out investigation to verify evidence, the People's Court may conduct inquest, examination, seizure, expert evaluation, as well as inquiry and freeze.

Criminal Procedure Law of the People's Republic of China provides in Article 156 that before a witness gives testimony, the judges shall instruct him to give testimony truthfully and explain to him the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence, that the public prosecutor, the parties, the defenders and agents ad litem, with the permission of the presiding judge, may question the witnesses and expert witnesses, and that if the presiding judge considers any questioning irrelevant to the case, he shall put a stop to it.

Criminal Procedure Law of the People's Republic of China provides in Article 159 that during a court hearing, the parties, the defenders and agents ad litem shall have the right to request new witnesses to be summoned, new material evidence to be obtained, a new expert evaluation to be made, and another inquest to be held and that the court shall make a decision whether to grant the above-mentioned requests.

The Supreme People's Court in explanation of several problems in carrying out Criminal Procedure Law of the People's Republic of China provides in Article 144 that the expert witness shall appear in court to read out the conclusion except those with the permission of the People's Court, and that after the expert witness is present, the judge shall first verify his identity and his relation with the parties and the case, and shall instruct him to give testimony truthfully and explain to him the legal responsi-

bility that shall be incurred for intentionally giving false testimony.

These provisions, simple and plain, mean a lot. They influence people's mind and soul so strongly that they are shocked greatly or they exert an imperceptible influence on people's thinking like a range of moving mountains.

In modern times anyone that has a little sense would know that the internal relations of expert conclusions with the case's trial. Forensic expert conclusions account for the largest amount in all evidence. Forensic experts can provide microcosmic material evidence for identification of blood relation, individual identification, natural death, medical lawsuits, as well as homicide, sudden death, murder. There is no substitute for forensic expert conclusions in verifying a case, making a clear distincton between right and wrong, distinguishing true from false, determining the nature and passing fair judgment according to the law. The evidence given by forensic experts has been the most trusty and powerful evidence in people's mind's eye. Once successful in putting to the proof it would set the tune with one beat of the gong giving the final word and become a bright spot in court. With truthful evidence naturally a fair trial will result.

Beyond all doubt the fact that the forensic expert witness appears in court is an epoch-making event in our developmental history of evidence system, as it relates to the new social need of the citizen and the sanctity of the law. Under the principles of democratic legal system, the public cherishes new social expectatins to the scientific equipment for forensic expert evaluation, the management of forensic expert evaluatin organizatins, and the general quality and conditions of forensic expert witnesses. In carrying out forensic expert evaluations the expert shall display his evaluations openly and abide by and obey the noble moral ideals as a expert witness and scientific spirit. This is a brand-new subject. Law has entrusted the rights to forensic expert witnesses and at the same time it also stipulates the duty they shall assume, which is a noble social honour. The rights should be cherished carefully. This is a duty, a entrustment. The law no passion can disturb. In our country medicolegal expert witnesses are all professional expert witnesses maintained by the government, and have gone through pushing and shoving, and steeled themselves in their practical work. Many of them have been moved deeply in their inner thoughts and are ready to make some respondence with their life experiences. But why cann't they move a single step in court? This reveals their troubled thought of their awkward position in their internal mind. A heavy heart lies not only in the expert witnesses themselves but in the all members present in the court who witness the whole process from opposal and debate of evidence to the approval of evidence. The psychological flow reflects general quality of every individual, which cann't be remedied through drilling. Putting to the proof and making inquiry about evidence arouse common concern in the court. Putting to the proof needs study, consultations, repeated practice, test, summarizing experience, help, reading, discussion, improvement, attaining enlightenment··· in short needs the art of burnishing and intennive cultivation by every means. A case requires medicolegal expert witnesses to display evidence modestly, bravely and earnestly. Antediluvian and affected academic face, and involved and abstruse theories are not what we want. What we want is to be easy for everybody to understand. Today only a small part of putting to the proof is good, and there are many failures in putting to the proof. Some cases cannot be solved for a long time. There are many reasons

for it. One of them is that medicolegal expert witnesses have not come to maturity. There are other reasons: the identification instruments for scientific research are too old and not adequate, the entrusted evidence is not in good condition and without enough quantity, the collection and transfer of the evidence is not safe and legal, the aim and requirements of evidence evaluation are not practicable, Of course the confrontation between the defendant and the accuser is one aspect of the problem and the judge's ability to understand medical evaluatin is also very important. The great contrast between ideals and reality reflects the backwardness in the building of legal evaluation system, which is also the reflection of our backwardness in academic theory.

Besides the above mentioned reasons people will sensitively think that there is too much specialization and unidirectional tendency in preparing themselves. Therein lies the crux of the problem. In the court medicolegal expert witnesses are scientific witnesses, who should have proof and evidence in hand, speak in a rational and convincing way, respect facts, stand by science, answer questions without hesitation calmly and clearly. To be qualified medicolegal expert witnesses, students of forensic medicine specialty are required to have both scientific atainments and humanity spirit, and have a good command of professional knowledge and healthy moral quality. It is the only good policy to begin the work from the fountainhead. During the five years' study students have to study a lot of courses. Which courses should be offered and which courses should not? Which courses should be emphasized and which courses should not? That is a question demmanding attention. If the problem cannot be solved properly the specialty designed to research legal medical evidence will lose its colour and ruin its development.

Law science, as a main course of forensic medicine specialty, is offered insufficient class hours and its teaching aim and its relation with clinical medicine are not clear. As "knowledge" is not "learning", the backbone and soul of forensic medicine specialty is how to embody ideological and political qualities, legal thoughts and spirit in all professional courses. Multi-subject built on the same junction will create new knowledge. The expert who teaches law science should be familiar with the basic courses of forensic medicine specialty. Penetration is the premise and condition of grafting. Experience shows that education in ethics and ideological education must be put in the first place. The law course must be enlarged according to the educational policy and training goal, for instance, evidence science, science of legal evaluation, evaluation psychology, evaluation ethics, evaluation language, ceremony and propriety of evaluation, legality history and substantive law and procedural law relevant to evaluation should all increase class hours. Curriculums have a bearing on the training goal of medicolegal expert witnesses and the need of discipline development and legality building. It also is the theme of quality education of forensic medicine.

The tardiness in reform of forensic medicine education and the legislation of legal evaluation system is only a phenomenon. Its direct cause is that the social funtion and scientic value of forensic medicine have not been recognized completely. During the countless disasters met in ancient times and the recent century, forensic medicine always brouht glad tidings to the society in difficult times. It is an undisputed fact, but afterwards it has been forgotten completely. It seems necessory for the specialty in pressing demand to stengthen scientific research and to make propaganda. In compiling the text-

book we meet the first bottle neck problem, that is, how to orientate forensic medicine. About its orientation there are many diverse opinions and the editoral board holds much dicussion. It is not an easy task to correct a age-old worldly prejudice against forensic medicine.

In the multicolored world human beings are the main body, and forensic medicine is the very science that makes research into human beings. It not only studies cultural people and physique people, but also research the value of human life and social value of people. The human nature is not the abstract individual inherence, but the sum total of all social relations. The research object and content of forensic medicine cannot be included by medicine and biology, but should include the human body, human race, human life, human social roll, human rights, and legal status, human spitual health and behavioral ability, human physiological behaviors and morbid behaviors, environmental social security, the prevention and handling of major disasters, the cause of death, the evaluatin of permanant compensation for disability and appraisal of lawsuits involving clinical malpractice, etc.

Science and humanity are combined together originally and it is difficult to separate them from each other. Today new knowledge is emerging every day. Reviewing the past we find that many subjects of today's natural science and social science cross each other verdically and horizontally and there is the relation of completing each other. Now people begin to research the narrow area where many subjects meet with forensic medicine to find new knowledge, new content, new technique and new method to meet the common desire for social equality, to answer the new questions raised by law and society. For instance, standard analysis of blood and germ stains, DNA scanning decoding, individual features recognition by computer, etc. all these are new fields which need long-term research.

The above facts show that forensic medicine is a science of legal medical evidence. It is a misconception to think that forensic medicine is to research and solve personal death and injury, and medical problems involving law. A right understanding of a science directly concerns the development of the science in the future. Just as a senior medical educationist says, in discussing the defintion of medicine "now people usually think of medicine as natural science". As a matter of fact 100 years ago there was a famous pathologist called R. Varchow said that in nature medicine was social science. Even some diseases are completely caused by society. It is only that medicine itself relies on natural science. Especially during recent years a great number of research results of advanced science and technology are introduced into medicine fields and thus it makes medicine increase the color of natural science. Recently in medical educational reform students of medical universities and doctors on job are offered such courses as sociology, medical psychology, medical ethics, law science and courses of interpersonal skills.

Recognize the research object of a discipline, its scientific status, and its application value, grasp the aim and nature of the discipline, and form an arigorous scientific concept and you would see far, just like standing on the top of the Jingsan Mount to have a good view of the whole city of Beijing. Some say that forensic medicine is easy to learn but difficult to practise. In fact it is difficult both to learn and to practise. It is not imaginable to climb its peak without the experience of the older generation and the ripe historical opportunity. As early as during the Spring and Autumn Period (770 – 476 BC) in China forensic medicine emerged in trial of cases. Western countries use coroner system,

which Britain initiated during Middle Ages. In the United States there are Chief Medical Examiner and Sheriff Medical Examiner as well Office of the Coroner. Those who work in the Office of Coroner are all experts of all subjects. The old office of coroner ceased to exist but the name is still retained. The social phenomemon gives one much food for thought. The word "coroner" is derived from royal servants. In history coroners are regarded as noble and in society they receive great honour. From the noble to the ordinary people the evaluation made by the coroner will decide the way to deal with such matters as birth, death injury and disability. But because of their property status and little education they are looked down upon by the force of habit, and thus sank into the bottom of the society. The difference between the west and the east in traditional culture and social formation is so great, but China's coroner system is so much similar to the western coroner system.

The social phenomenon indicates man's attitude towards birth and death. His mental state is contradictory. While believing that birth and death are equally important he also thinks that death is more important than birth. Clearly the invisible force of babit is both obedient to and contemptuous of the coroner.

In developed countries they adopt graduate education. There is no medical specialty in universities. The students to be trained as medical professionals must be much higher than undergraduate education. In these countries it is provided that forensic expert witnesses enjoy the legal status of scientific witnesses, so the selecting condictions are very strick and it will take a long time to be a useful person. There are three ways for the making of forensic professionals:

The first channel is: he first receives undergraduate education at a medical college and graduates with doctor medical degree. After graduation he must makes further study of medical specialty for two or three years and gets master degree; or after graduating from a medical college he majors in pathology for five years with doctor's degree of medicine and then acquires some knowledge of forensic medicine: studying death theory (24 hours), performing 24 cases of autopsies, attending five crime scenes of death. Besides he has to study bacteriolgy, biochemistry, firearms, dentistry, serology, anthropology and trace science. After passing the natinal examination he is qualified to be a legal medical expert.

The second channel is: to make further study of forensic medicine in Federal Bureau of Investigation, Armed Forces Institute of Pathology, and more authoritative forensic medicine bureaus in New York, Los Angeles and Chicago. All applicants for further study are graduated from medical colleges with clinical experience, and have taken up 5 years' further training of pathology, with doctor's degree of pathology. After passing the examination they will be sent to forensic medicine bureau to work as medicolegal expert witnesses.

The third chanel. The unidirectional tendency and too much specialization in training medicolegal professionals affect the source of medicolegal expert witnesses and can not meet social demand. For that reason the federal government made some adjustment in 1997, stipulating that any pathologist can be a legal medical expert, and this increses the scource of legal medical experts. Since pathologists have made great achievements in the fields of basic medical research and clinical pathology, and acquired the doctor's degree of pathology, with them coming into the team of forensic medicine, surely it

will greatly affect the knowledge structure of forensic medicine.

Some world-famous legal medical experts of today think that during the middle-and late-1900s a striking developmental feature of forensic medicine is the developmental tendency of polarization of disciplines, division and synthesis. For example, forensic anthropology, forensic serology, forensic toxicological analysis, the division and judgement of liable capacity of psychosis criminals, identification of death cause, forensic clinical medicine, forensic medicine of handling navigation and aerospace accidents, forensic investigation of explosion and fire disaster——all these fields are the comprehensive knowledge of forensic medicine, but on the other hand each field of disciplines develops towards respective specializtion. Those who hold these view of points think that modern forensic medicine almost directly refers to pathology, because it could not be possible for any forensic expert to solve the problems involing so many aspects. Any solution to a major problem needs the cooperation of many experts of different subjects. A modern forensic expert is only an eminent forensic pathologist. This is the most practical and suitable.

Another similar view of points is that modern forensic medicine is psychiatry plus pathology.

Our country has its own conditions. Before liberation there were only dozens of forensic experts in such a large country. Research and teaching system of case examination had never been established. Originally forensic medicine is a special spcialty in short supply, a science at forward position and an application subject. It is tightly related with the development of natural science and humanity science, especially the civilized process of legal sciene and can develop side by side. It is not difficult to imagine that before liberation China's medicolegal personnel resources were terribly out of balance.

After the founding of the People's Republic of China in 1949, in order to meet judicial reform and the urgent need for examinating a great number of cases, the central government entrusted the training of 300 forensic experts to Shanghai Medicolegal Research Institute, NanJing University and China Medical University in Shenyang. After they arrived at their posts, they set about obtaining conclusive evidence by means of forensic evaluation and redressed wrong cases. At the crucial moment of the newly born governement they made a great contribution to the people. For that reason people compared chairman Mao and the Communist Party to a never setting sun in the sky.

At the beginning of the founding of the People's Republic of China forensic medicine did receive great attention in society. Cardres working in political-legal organs had to study forensic medicine, and there were teaching and research group of forensic medicine in medical school or institutes and political-legal schools or institutes. Forensic medicine became a compulsory course. Media also attached great importance to the popularization of forensic medicine among the people. Many people knew that forensic medicine was very important in solving cases. But after ten years' social upheaval during the "cultural revolution", many medicolgal experts changed their jobs or retired, and forensic medicine lacked successors and faced the danger of being discontinued once more. There was no specialty of forensic medicine in higher education. Because the pattern of legalmedical experts got out of balance, mediciolegal expert witnesses fell into "the black hole of talent".

In 1983, the Supreme People's Court, the Supreme Procuratorate, the Ministry of Public Security, the Judicial Department, the Educational department, and Health Department held a forum of

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