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Editorial

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Forensic Pathology in a Changing Society

-Emmanuel N. Michalodimitrakis, MD. JD
Professor of Forensic Pathology and Toxicology
Chairman of the Department of Forensic Sciences
University of Crete
Heraklion, Crete, Greece.
Email: mihalodi@hotmail.com

Emmanuel N. Michalodimitrakis, Greece
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The forensic pathologist's contribution in the preliminary examination and investigation inquiry of sudden, violent and suspicious deaths has been established as an essential medical and legal form of determination of the nature of such deaths. Formally and essentially the forensic pathologist becomes the legally authorized expert having the duty to determine the cause and the manner of death (meaning; homicide, suicide, accident or natural death) and to answer several important related questions.

Therefore, the forensic pathologists seriously contributes in the investigation from the early phase aiming to provide scientific opinion for the sudden death and in criminal cases to give reliable and clear evidence in order to found the involvement of the assailant. This robust documentation is of a primary importance for the charge of the criminal act to the perpetrator, along with the enforcement of the penalty[1]. Additionally, it ensures that justice has been meted out in order to restore the society's feeling of safety, which is always disturbed by a crime.

With the benefit of the technological advent, the methodology used nowadays has made the Forensic Pathology a distinctly important investigative inquiry of the deaths, based on scientific evidence. The reliability, completeness and objective investigation of the forensic pathologist facilitates the formation of the juridical beliefs between the judges and the jury. Certainly nowadays the "*nullum crimen nulla poena sine processu*" of our legal system or the "*due process of law*" of the Anglo-Saxon legal system would not fulfil their expectation without the forensic investigation. In Greece, the Supreme Court emphasizes the institutional upgrading of the forensic pathologist report[2].

Medicolegal investigation of death

The contribution of medicine to the law and administration of justice is rooted in the very earliest times. The oldest known law code is that of Hammurabi, the King of Babylon, dating back to about 2200 B.C. and included legislation on the practice of medicine. Until the Roman era, however autopsies were generally not performed, because the dead bodies were considered as sacred.

The first medico-legal examination on record was performed on Julius Caesar on March 15, 44 B.C. by Antistius, a Roman physician, who externally examined the great emperor's body and found that only one of his twenty-three wounds was mortal. Over the time the concept of forensic science evolved. The Justinian Code, which made its appearance in Rome around 550 A.C., stated that physicians were witnesses in a dispute before a tribunal or the government. This was the first recognition of the expert witness in history.

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By the 1600s, legal medicine had advanced beyond the status of just a theoretical pursuit and was introduced into legal texts and courtrooms throughout Europe. In the 17th century medico-legal institutes and departments were established in Universities in Germany, Austria, France, and Italy. This overwhelming reality in the continental Europe was followed by similar changes in the United Kingdom where in 1807 the first chair of Legal Medicine in the English-speaking world was established in Edinburgh.

In parallel the Scotland Yard in the United Kingdom has been developed over the last century into a modern multidisciplinary investigative police agency. In this context, the supplementation of the advanced services with the provision of scientific and medical evidence evolved as a crucial one and thus forensic pathologists were appointed as home office pathologists.

The development of forensic pathology in America started with the introduction of pathology into the investigation of deaths in the middle of the 19th century. Since then, it became apparent that the coroner should hold professional qualifications in medicine and in cases where the coroner was a lawyer the provision of pathology assistance was deemed necessary. Soon various states transformed the coroner's service into an entirely new system. This process commenced in Massachusetts in 1877 and spread to other states and now all the main cities are served by medical examiner offices headed by forensic pathologists. The need for such scientific approach of the criminal investigation was exemplified by the notoriously known Parkman case. Dr. John White Webster, a professor of chemistry and mineralogy at the Harvard Medical School, murdered Dr. George Parkman, a wealthy benefactor of the same Medical School, in 1849. Dr. Webster was hanged for the murder after the identification by odontological examination that the charred dental and denture fragments found in the Harvard chemistry laboratory furnace belonged to Dr. Parkman.

The evolving role of Forensic Pathologist in the criminal investigation

The forensic pathologist plays a significant role in the society's efforts to investigate the criminal acts. The forensic investigation starts with the collection of the circumstances, details and findings on the scene of the crime and the scientific analysis of the victim's body and biological samples

taken from it aiming to reveal the perpetrator, the time and the place where the crime took place, and the mechanism of the criminal death.

...in the absence of ... scientific approach and under the influence of the social perception, mainly formed by the media and the public feeling, the criminal investigation is likely to end with a faulty verdict. In other words, natural deaths may be characterized as criminal and vice versa or an innocent may be considered as a perpetrator and vice versa...

Suffice to say that in the absence of such scientific approach and under the influence of the social perception, mainly formed by the media and the public feeling, the criminal investigation is likely to end with a faulty verdict. In other words, natural deaths may be characterized as criminal and vice versa or an innocent may be considered as a perpetrator and vice versa. As the state's power through the criminal law has been the most important cause of mankind's suffering and devastation in peaceful periods[3], it is obvious that citizens would be unjustifiably exposed to the state's suppressive mechanisms in case of their incrimination for a death due to a faulty or incomplete investigation of the event. Considering the number of those unfairly imprisoned or condemned to death as it was proved later by the forensic DNA analysis, which disclosed their innocence, the therapeutic character of forensic methodology becomes more than obvious[4].

Obviously, in the Greek, and not only, procedural criminal law, the conclusions and findings of the forensic investigation are subject to the principle of moral evidence and are assessed freely from the juridical servers in all phases of the trial. Of course, opposing views may exist between doctors and lawyers and this is the benefit of having the experts' reports as supportive to the trial's process[5].

Of special importance is the role of the forensic pathologist during the first phase of the criminal procedures, particularly during the preliminary examination and investigative inquiry of a death. Obviously the provision of scientific evidence on the cause and the manner of the death is responsibility of the medical examiner[6]. Nevertheless, lawyers and judges and especially the public prosecutor, who leads the interrogation, can also classify the manner of death as homicide, suicide, accident or natural death according to the European and Anglo-Saxon Law. Although the examining judge and the juridical bench are free to decide autonomously the international judicial experience reveals that when there is dispute between the medical examiner and the examining judge, in most of the cases the opinion of the former prevails[7]. Additionally, no law decision can modify the medical examiner's scientific opinion and his consciousness in this matter[8].

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Both the European and the Anglo-Saxon Law converge as far as the investigative inquiry of a death is concerned. The mainly applied methodologies are firstly the forensic medicine and secondly the classical examination by the judge. In both situations, the responsibility for the investigative inquiry of the crime belongs in general to the public prosecutor. Nevertheless, based on the legislation and the daily-applied reality two basic features and similarities can be recognized. Firstly, the duty of the primary investigative inquiry belongs to the police officers (visitation and safety of the place of death, fingerprinting, confiscation of objects related to death, examination of witnesses, the arrest of suspects, etc.) and the medical examiner (autopsy, sampling, histological and toxicological examinations, etc.). Secondly, the role of the public prosecutor, particularly in the

continental Europe, becomes important after the submission of the file with the preliminary examination by the police and not from the beginning. The forensic pathologist's report is submitted after few days either directly to the public prosecutor or indirectly by the police, and then the tactical investigative inquiry begins by the allocation of the matter to the examining judge. However, the collaboration between the police and the public prosecutor continues aiming to keep the public prosecutor updated with the case all the time.

Despite the fact that the early phase of the investigation remains a duty of the police officers, it is however known that the police officers may utilize methods for the prosecution of the criminal and the collection of facts that are not free of controversy[9].

Additionally, in this early phase the role the public prosecutors mainly in the Anglo-Saxon system (District Attorney in the USA, Prosecutor in G. Britain) is usually a one-sided accuser even after institutional improvements and their collaboration with the police is interiorly enacted[10].

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In contrast, the role of the prosecutor in Europe seems to be more objective, less or not at all one-sided, ensuring more safety in the dispense of justice and the protection of the rights of the suspected person. Furthermore, the public prosecutor belongs to the juridical system, being involved in the law body, and his duty is bilateral including the collection of facts not only for prosecution, but also for the innocence of the prosecuted party.

However, although individuals' rights seem to be more protected by the European law, the daily practice of the procedural dispositions do not show essential difference. The difference between the law theory and what actually happens in the daily practice has been pointed out[11].

The public prosecutor is always the authority, which has in its disposal all the governmental mechanisms. On the other hand the accused party remains the weak side because of its inability to face the state mechanisms. The promise of institutional equality seems to be a rather theoretical excuse of the state for its inability to ensure sufficient protection to the rights of the accused party[12].

The institution of the examining-judge constitutionally exists to ensure the protection of the accused party by his independent opinion. The forensic investigation must support the judge's preliminary decision, so that the judge can effectively protect the rights of both sides. Additionally, the forensic investigation of a suspicious death may reveal that the death was not a crime and thus judicious evaluation of the evidence derived from the forensic investigation can result in less unnecessary trials and ensure more accurate and fair verdicts, which eventually contribute in strengthening the people's trust to justice[13].

Relations with other Authorities and the Social and moral contribution of the medical examiner

The forensic pathologist may be called by the police authorities, the public prosecutor or the judge and on several occasions as a technical advisor from the defence, but he never testifies for them. In between the various parties (police, public prosecutor, defense, judge) the forensic pathologist can only have one stance, which is exactly in the middle. In the final analysis the benefit offered by the

medical examiner's investigation is the constitutional equality of people's rights, so much for the accused person who otherwise would be publicly humiliated[14,15].

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Forensic pathologists and criminologists in over 95% of the cases are called for action by the prosecutors and police authorities, implying possibly that their compliance to these authorities ensures the smooth pour of cases into their jurisdiction[16]. It is not unlikely the forensic pathologists to become part of the system and thus to deviate from their role as an independent institution for the protection of the society's best interests and to stand in agreement with the state authorities hoping to gain personal power, recognition and praise.

The forensic pathologist has the duty to undertake full investigation of the matters in order to provide unbiased testimony[17]. The role of the forensic pathologist must have an intervening character for the defense of the citizen's rights. When it is needed he should express his opposition towards the police and the rest of the interrogating servants based on scientific evidence that supports his opinion.

Additionally, the forensic pathologist should stand soundly against state authorities when political interests are leading to verdict falsification. Mixing contentions, politics with bad medicine can make for some pretty lethal results[18]. Such examples are not unusual; in 1969 it was revealed that the Chicago Medical Examiner's Office was politically dependant and it totally collapsed[19].

On ethical grounds it should never be forgotten that the forensic pathologist is a distinct institutional agent who never stops to think and he remains a medical doctor faithful to the Hippocrates Oath.

Towards the harmonization of forensic investigation in the international arena

The importance of the forensic investigation is not fully understood by all public servants, and it is not uncommon the perception that it represents simply "a medical paper"[20]. However, in the daily practice the forensic investigation can cause problems when performed unsoundly, hastily and bureaucratically, and on some occasions not professionally[21].

...Forensic reports that include only a brief description and a conclusion without photographic and radiological documentation, supplemented by histological and toxicological analysis, obviously constitute professional violation...

Forensic reports that include only a brief description and a conclusion without photographic and radiological documentation, supplemented by histological and toxicological analysis, obviously constitute professional violation[22]. It is our opinion that such reports are unacceptable, obscure the investigation of the case, and make impossible or dangerous the juridical process. Additionally, such reports minimize the benefit that could be derived from any expert's opinion that may be requested at the later stages of the trial and in most of the cases the consequences are against the accused person.

In the United States, there are some examples where the forensic pathologists were accused of making systematically mistakes and unfounded interpretations on their reports and one of them a forensic pathologist was eventually fined to a penalty of two years imprisonment[23].

Nowadays, there is an evolving necessity to develop international standards and guidelines on how the forensic investigation should be done and the way by which the final report should be produced.

In the USA, the change of the office of coroner with a medically oriented system (".to offer justice to the American people equal to that deserved to people living in a civilized country")[24] ,was followed by the important Congress of Milwaukee in 1933 where the scientific framework of forensic pathology and the qualifications required from the acting forensic pathologist were defined[25]. In 1936 the specialty of forensic pathology was officially established having a five-year training curriculum and the training centres and the methodology of the forensic investigation were defined[26,27].The work of the Minnesota Committee led to the adoption of its Report by United Nations in 1991. Also in Canada the regulations are similar and ensure the bottom line of the qualifications that a doctor must have in order to practice legally forensic pathology[28].

...The European Council of Legal Medicine established a special commission of forensic pathologists, lawyers and police officers for the formation of an international protocol and methodology for the medico-legal investigation...

Over the last decade serious work has been done in the European Union in order to determine the field of forensic pathology, the postgraduate curriculum, and the determination of the forensic methodology in the investigation of the incidents aiming to achieve a similar structure across all the European countries[29,30].

The European Council of Legal Medicine established a special commission of forensic pathologists, lawyers and police officers for the formation of an international protocol and methodology for the medico-legal investigation[31,32]. The commission was given the authorization by the Council of Ministers of the European Union in 1997, to look at the international methodology of Interpol in the United Nations, as well as to study of the report of the international council of Minnesota for human rights. After all they formed the R (99) 3 document that was taken up by the Council of Ministers of the European Union in 2-2-1999.

The European effort is extremely important since for the first time there is a written provision on the duty of a medical examiner to perform the post-mortem examination in case of a death in which violation of human rights, such as rape or other types of maltreatment, is suspected.

The need for training of police officers and lawyers in the field of forensic pathology and of forensic pathologists in law regulations has been pointed out[33]. The lack of such common training and a spirit of cooperation between forensic pathologists and lawyers, interferes with the proper forensic investigation and testimony and prevents the dispense of justice and the protection human rights of the accused party[34].

Summary and final remarks

The dispense of justice and the creation of a civilized and lawful society with full respect of the human rights and the safety of its citizens are impossible without the use of the institutional principles of medicine. The lack of medicine equals to the lack of health for the soul and body of the

society. Lack of justice equals lack of the social peace and lack of safety of the human rights, leading to the degradation of human civilization and the morals that characterize it.

The evolving role of forensic pathologist and the empowering of the process of the forensic investigation with the establishment of widely accepted guidelines are of paramount importance for the protection of human rights in the dispense of justice.

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