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CRIMINAL LAW CASE NOTES AND COMMENTS

Prepared by students of Northwestern University School of Law, under the direction of student members of the Law School's Legal Publication Board

John L. Flynn, *Editor*

THE OFFICE OF CORONER VS. THE MEDICAL EXAMINER SYSTEM

In the field of homicide, public concern over investigations to discover and apprehend the criminal has obscured the importance of initially determining whether a crime has been committed. This determination is essentially made by finding out whether death has resulted from criminal violence, accident, or natural causes. Proper resolution of the cause and manner of death not only brings to light unsuspected homicide and provides evidence for discovering guilt, but also exonerates the innocent where no criminally caused death is found.¹ However, this function generally is so improperly performed today that "...with reasonable certainty it may be said that several thousands of murders pass unrecognized each year in the United States."²

Responsibility for this deplorable situation has been laid to the inherent nature of the traditional agency charged with making the

death determination—the coroner. In all or most counties of over forty states it is the coroner's inquest which makes the initial finding as to what caused expiration where the deceased was unattended by physician or death occurred under unusual circumstances. It has been widely advocated that the office of coroner be replaced by the medical examiner system.³ As medical examiner systems have been in operation for many years, comparison can be based on more than a theoretical basis. Caution should be exercised that technical mislabeling of systems does not occur, since there is significant variation within existing coroner and medical examiner types.⁴ Yet, typical substantive features in both systems are so pronounced that a valid comparison can be made.

The office of coroner, like that of sheriff and bailiff, is an old Anglo-Saxon institution transplanted to this country. In England during medieval times, the coroner exercised a con-

¹ Although this paper is primarily concerned with the determination of the cause and manner of death as related to homicide, it should also be noted that the accuracy of such determination also has ramifications in detecting public health hazards, exposing industrial dangers, and in the payment of insurance claims where suicide is suspected. Stucky, *Kentucky Coroner System Labeled Ridiculous*, *The Louisville-Courier Journal*, Feb. 13, 1955, Section 3, p. 1, col. 1.

² Snider, *Is the Coroner System Behind the Times?* *Chicago Daily News*, Aug. 9, 1954, p. 8, col. 1. Also see Ford, *Medicolegal Investigation of Violent and Unexplained Deaths*, 145 *J.A.M.A.* 1027, 1028 (1951); *REPORT OF THE COMMITTEE OF THE AMERICAN MEDICAL ASSOCIATION TO STUDY THE RELATIONSHIP OF MEDICINE AND LAW* 17 (1945).

³ *MODEL POST-MORTEM EXAMINATIONS ACT* (1954); Editorial, *The Merits of the Medical Examiner System*, 19 *THE PROCEEDINGS OF THE INSTITUTE OF MEDICINE OF CHICAGO* 46 (1952); *NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICOLEGAL INVESTIGATIVE SYSTEM* (1951); Gradwohl, *The Office of Coroner—Its Past, Its Present and the Advisability of Its Abolishment in The Commonwealth of Missouri*, 13 *THE LABORATORY DIGEST* 1 (1950); Maldeis, *Medical Examiner's System in the State of Maryland*, 41 *SOUTHERN MEDICAL JOURNAL* 840 (1948).

⁴ *REPORT OF THE COMMITTEE OF THE AMERICAN MEDICAL ASSOCIATION TO STUDY THE RELATIONSHIP OF MEDICINE AND LAW*, (1945).

glomeration of duties related to safe-guarding the pecuniary interests of the King.⁵ The office was elective and required no prior medical training. These features have generally persisted in the American office.⁶ The duty of holding an inquest to discover the cause of death (at that time primarily to learn whether the deceased had committed suicide, thus forfeiting his estate to the Crown) has emerged as the present day coroner's most important function.

This inquiry still follows the same basic routine. The coroner goes to where the body has been discovered in his county and makes a preliminary investigation. Then he summons a six man jury from the neighborhood to view the body, hear witnesses, and render a verdict as to the cause and manner of death. This proceeding, known as the coroner's inquest, not only has the function of making a medical classification of the death but also of fixing initial guilt if homicide is found. If the coroner or his jury can not definitely ascertain the cause, he or they have discretion to order an autopsy. A homicide verdict will be referred to the state's or district attorney who may draw

⁵ At common law his functions included searching out the forfeited property of murderers, suicides, and felons; treasure trove and other contraband deemed the King's property; and such fish royal as whale and sturgeon for the Crown. Palmer, *The Coroner as a Vestigial Remnant*, 36 A.B.A.J. 720, 721 (1950). Even today several unrelated duties have remained attached to the office, such as substituting for the sheriff when he is under an incapacity, and conserving the peace. See e.g., ILL. REV. STAT. c 31 §§ 6-7 (1953).

⁶ Ohio and Louisiana require their coroners to be physicians, unless there is no physician in the county or parish who will accept office. OHIO GEN. CODE ANN. § 313.02 (1953); LA. CONST. Art. VII, § 71. In many municipal counties, even without such legal requirements, properly qualified medical men are elected. However, a survey made in 1950 of the 70 counties in Wisconsin under the coroner system shows that the coroner was a doctor in only 17; persons directly engaged in the undertaking business in 33; and the balance in such diversified occupations as furniture dealer, grocer, and bowling alley operator. Johnson, *Wisconsin Coroner System*, [1951] Wis. L. Rev. 529, 534-536.

up the bill of indictment which is presented to the grand jury. If the verdict has implicated a named individual he may be immediately arrested on a warrant issued by the coroner or a magistrate⁷.

The major argument made for retention of the coroner system is that through the coroner's jury verdict a democratic "check and balance" is maintained against dishonest public officials who might otherwise conveniently cover up homicides by not reporting true causation of death. In practice, however, the average coroner's jury, being unfamiliar with its duties, will find the verdict that the coroner has instructed it to return.⁸ Explicit instruction is actually unnecessary as the jury is not presented conflicting medical testimony that is subjected to cross-examination, but only the view the coroner has decided to offer. Also the verdict is purely advisory to the grand jury and may be completely disregarded.⁹ In many jurisdictions communication of the coroner's findings to the grand jury is by statute or judicial decision restricted to the discretion of the prosecuting attorney.¹⁰ Even where this is not the case, the prosecuting attorney frequently has control over the grand jury similar to that which the coroner exercises over his jury.¹¹ Therefore reliance on the

⁷ There is an alternative method for reaching the grand jury which by-passes the coroner's inquest. After the police obtain sufficient evidence to secure a warrant, they arrest the accused, and bring him before a magistrate who decides whether there is sufficient cause to "bind him over" to the grand jury. This is the procedure generally employed for criminal offenses of a more serious nature. PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 87-94, 110, 111 (1953).

⁸ Professor Inbau has pointed out, "Over the years, the practice has been for the deputy coroner presiding at the inquest to tell the jury of six good and lawful men of the neighborhood what verdict to bring in and the jury does." Quoted in Snider, *Urge Medical Examiner Replace Coroner System*, Chicago Daily News, Aug. 12, 1954, p. 22, col. 1.

⁹ *Smalls v. State*, 101 Ga. 570, 28 S. E. 981 (1897).

¹⁰ See Comment, *The Grand Jury*, 44 J. CRIM. L. & CRIMINOLOGY 49, 51-52 (1953).

¹¹ *Id.* at 49.

coroner's jury to offset corrupt coroners or prosecuting attorneys is unrealistic.

The basic failing of the coroner and his jury, however, is inability to cope with the medical problems their task involves. The coroner is rarely a doctor, and in many instances, lay observation will not detect the cause of death.

"There is little or no external evidence of injury from many poisons, homicidal asphyxiation, and sometimes fatal wounds of the skull and brain, cervical spine or spinal cord. The application of blunt force such as a kick or a blow with a stick to the abdomen may cause a rupture or laceration of a hollow or solid viscus without any external sign."¹²

Even when the coroner has a physician on his staff, that fact does not remedy this basic defect in the coroner system, since very few of the nation's physicians are trained to make a proper determination of the cause of death. He is not skilled in pathological anatomy as applied to legal medicine.¹³ In determining whether an autopsy is necessary, as well as in performing it, the medical man should be aware of items stemming from his investigation which have evidentiary significance. One who possesses such understanding is known as a medicolegal expert. Under any circumstances only a pathologist is competent to perform an autopsy. The pathologist also must have medicolegal training and experience if he is to be expected to establish identity of the deceased, determine the way the mortal wound was administered and find much other evidence a routine hospital autopsy would not reveal.¹⁴

¹² Helyer, *The Postmortem Examination in Homicides*, 1 AMERICAN JOURNAL OF MEDICAL JURISPRUDENCE 165, 173 (1938).

¹³ Editorial, *The Merits of the Medical Examiner System*, 19 THE PROCEEDINGS OF THE INSTITUTE OF MEDICINE OF CHICAGO 46 (1952).

¹⁴ "Any experienced pathologist should be competent to determine the cause of death, but the determination of the cause of death is frequently only the beginning of the medicolegal autopsy. The problems incident to the establishment of individual identification are first among the objectives peculiar to the practice of forensic pathology.

The coroner ordinarily does not have available the services of a medicolegal pathologist or a central state laboratory for conducting autopsies and making related scientific tests, although these factors do vary in states predominantly under the coroner system. In some, especially in the larger municipalities, good post-mortem work is accomplished by the coroner's staff of pathologists and toxicologists.¹⁵ Scientific facilities, either public or private, in the larger centers may be made accessible to the coroner from the less populated county. But on the whole the average county coroner with the best of intentions is severely handicapped.

Given the best medicolegal information obtainable a lay coroner's jury can not make a finding of value because it does not possess the specialized knowledge to properly evaluate this information. Men without any medical training are not equipped to pass on the results of a

Remains are often so fragmentary and decomposed that special methods of examination are required in order to establish whether they are of animal or human origin. If of human origin, all information of possible use in establishing individual identity must be sought. The character of the teeth or the skeletal configuration or the recognition of some minor physical peculiarity may be of utmost significance in the establishment of personal identity. The estimation of the approximate time of death is often useful. . . . In ordinary pathological practice a skull fracture is evidence of a head injury, but is not otherwise of special interest. In the practice of medicolegal pathology, however, it may be found that a study of the configuration and character of the fracture lines in a skull may help to differentiate between death caused by accident and death resulting from homicide and may even indicate the type of weapon which was used." Moritz, *Medical Science and the Administration of Justice*, 13 PROCEEDINGS OF THE INSTITUTE OF MEDICINE OF CHICAGO 56-57 (1940).

¹⁵ Childs, *Rubbing Out the Coroners*, 39 NAT. MUNIC. REV. 494, 495 (1950). Dr. Henry Turkel, the coroner of San Francisco, writing in defense of coroner systems appears to use the results from his own and a few other meritorious counties as examples of general operation. Turkel, *Merits of the Present Coroner System*, 153 J.A.M.A. 1086 (1953).

complicated autopsy. The example of six lay jurors being called on to review the joint findings of six pathologists in the controversial Montgomery Ward Thorne inquest brings out the extreme absurdity such procedure can reach.¹⁶

Another objection to the system is the political nature of the coroner's office. The coroner's obscure place on the ballot, the lack of direct contact with most of the public, and in many counties the infrequency of his function all combine to offer protection from critical scrutiny. His work, except in a few sensational cases, receives little attention from the public. Consequently, he is frequently selected for political rather than professional competence and he, in turn, usually appoints technical assistants and hires outside aid on the same bases.¹⁷

Detrimental political effects also stem from the coroner's position in relation to the county prosecuting attorney, for there is a great potential for rivalry between the two. Although not answerable to the prosecuting attorney, his superior in political power, the coroner is charged with contributing to the success of the latter.¹⁸ This rivalry, intensified by the duplicative functions shared by them,

¹⁶ Chicago Daily News, July 16, 1954, col. 1, p. 2.

¹⁷ Even where the coroner or his equivalent is appointive the office is often used for political patronage without regard to competence. Childs, *Rubbing Out the Coroners*, 39 NAT. MUNIC. REV. 494, 495 (1950).

¹⁸ "If by a lucky accident the coroner succeeds in bringing something important to light, it is not he who is the beneficiary of this discovery, but the prosecuting attorney, who will afterwards have to try the case. In many counties the prosecuting attorney is the most important local political figure. He has . . . the greatest amount of patronage to dispense. Immediately below him comes the sheriff and the coroner. Even if they belong to the same political party . . . each is struggling for the top position . . . [and not inclined] to look with too much enthusiasm on the success of the other. This situation is aggravated many times over if the two officials happen to belong to different political parties." PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 113 (1953).

can lead to a lack of cooperation hindering the administration of justice.¹⁹

Local undertakers gravitate to the coroner's office.²⁰ The opportunity for them to obtain business because they have initial charge of the body would not be so objectionable if it did not tend to cut down necessary autopsies. Although a skillful autopsy leaves no outward traces on the body, many persons have great antipathy to one being performed on a deceased relative. To avoid losing the business by antagonizing the deceased's family the undertaker is prone to determine that an autopsy is unnecessary.²¹ Even without this motivation, any elective coroner may curtail desirable autopsies when political pressure is exerted on him.

Recognition of the failings of the coroner system has led Maryland, Massachusetts, and Virginia to establish the medical examiner system on a state-wide basis.²² New York

¹⁹ Puttkammer gives the following evaluation of these duplicative functions.

"A murder has been committed, let us assume and it is strongly suspected that a person meeting such-and-such a description is the guilty party. The [familiar] newspaper item reports, without comment or any indication of surprise that 'the inquest was continued for two weeks in order to give the police an opportunity to conclude their investigation' . . . The coroner's inquest that is ostensibly to help in clearing things up is postponed in order to enable the police to function. In other words, the best help that the coroner can give the police is to keep out until the police have had a chance to do a really good job." PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 113 (1953).

²⁰ See note 5 *supra* as to the representative Wisconsin survey on the proportion of coronerships which go to undertakers.

²¹ Stucky, *Kentucky Coroner System Labeled Ridiculous*, Louisville Courier Journal, Feb. 13, 1955, Sec. 3, p. 1, col. 4.

²² NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL SYSTEM 7 (1951). The greater experience of the states mentioned in the text makes them the best examples to study. However, there has been other action at the state level. Rhode Island has only operated a state-wide medical examiner system since 1949. R. I. Public Laws 1949, c. 2303. In 1954, Michigan provided for the adoption of the medical examiner system

City and several cities and counties in other states have also replaced their coroners with medical examiners. The National Municipal League and the National Conference of Commissioners on Uniform State Laws have given much attention to model medical examiner legislation. From these two plans and from the medical examiner systems in operation, a few recommended essentials can be observed.

1. A medicolegal investigator initially determines the cause of death and whether an autopsy is required.²³

Under this system the investigator is a physician with some pathological orientation trained to recognize facts that are of legal significance in making his determination. Where an autopsy is required it is performed by the chief medical examiner or one of his assistant medicolegal pathologists, or such pathologist as the chief medical examiner may designate.²⁴

2. The medical examiner is a specialized investigator and does not have the coroner's duties of holding a public inquest and issuing warrants of arrest.²⁵

The examiner's sole duty is to make a scientific determination of how death was caused and report to the public prosecutor. Thus there is little duplication of duties or authority to cause friction between the medical examiner and the prosecutor.

3. The local medical examiner's operations are not restricted to the territory of a coroner—a single county.²⁶

at the option of the individual county. MICH. STAT. ANN. § 5.953 (1) (1953).

²³ NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM 25 (1951). There is a slight variance in the MODEL POST-MORTEM EXAMINATIONS ACT which places discretion to order an autopsy with the chief medical examiner. MODEL POST-MORTEM EXAMINATIONS ACT § 5 and comment (1954).

²⁴ Furthermore, if the public prosecutor should feel, despite a negative finding by the local medical examiner, that an autopsy is warranted, he has authority to insist that one be performed.

²⁵ NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM 26-27 (1951).

²⁶ *Id.* at 12.

No more than 50 of the 3072 counties in the United States provide enough cases to properly utilize a medical examiner, while some large metropolitan counties need more than one. Allocation of the examiners is based on population requirements and convenience irrespective of county lines.

4. A central state medicolegal laboratory is available to supplement the local medical examiner's investigations.²⁷

All the tools of modern science including chemistry, microscopy, photography, radiology, bacteriology, toxicology, and pathology are made available through the central laboratory. Experts in the allied sciences are as essential to this staff as the qualified pathologists.

5. The office of medical examiner is appointive rather than elective.²⁸

It is most desirable for a state's chief medical examiner to make local appointments or have a voice in them. He serves as the administrative head of the entire state system. He also is appointive, preferably by a commission.²⁹ His functions are to receive reports from the local medical examiners on the investigations, provide general supervision over procedures and remove local examiners who function improperly.

Civil service lists should provide the qualified selectees. But even without civil service, the desired qualifications for a medical examiner being set into law will deter incompetent political appointments. In practice the method of appointment widely varies. In Maryland, the appointments are made by an *ex officio* commission composed of representatives from the police, state health department, medical schools, and four practising physicians.³⁰ In

²⁷ *Id.* at 16-17; MODEL POST-MORTEM EXAMINATIONS ACT § 7 (1954).

²⁸ MODEL POST-MORTEM EXAMINATIONS ACT § 2 (1954); NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM 15 (1951).

²⁹ NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM 15-16 (1951); MODEL POST-MORTEM EXAMINATIONS ACT §§ 2, 3 (1954).

³⁰ MD. ANN. CODE GEN. LAWS art. 22, § 3 (1951).

Virginia, the state health commissioner, with the approval of the State Board of Health appoints.³¹ The governor with the advice and consent of the Governor's Council appoints in Massachusetts.³² Where there is no state-wide organization the mayor or prosecuting attorney makes the appointments.³³

Medical examiner systems have proved themselves in practice. They show marked improvement over the coroner in distinguishing homicides from naturally caused deaths,³⁴ in using efficient techniques which stand up under cross-examination at the trial,³⁵ and in maintaining freedom from political interference. Yet for adequate service in both the rural and municipal county, the average cost of operating a medical examiner's office is no more than for a coroner. Comparative statistics for 1952 indicate New York City under a medical examiner system performed autopsies in 25% of its death investigations at a cost per capita of slightly under five cents; in Baltimore where 55.8% of all cases were autopsied by medical examiners the cost was about six and four tenths cents per resident; while Chicago under the coroner system autopsied 14.8% at a cost of slightly more than six cents per capita.³⁶ The comparable cost for improved service is possible because the medical examiner system has dispensed with the coroner's duplicative quasi-legal activities,³⁷ and even

in the rural areas allocates the work over a sufficient population base by not restricting personnel and equipment to county lines.

There are, however, some obstacles to the adoption of a medical examiner system as outlined. Some states do not allocate sufficient funds for their death investigations to enable a medical system to function properly. Although the medical examiner can operate more economically than the coroner, when both are rendering substantially the same service, adequate compensation is necessary to obtain the full-time services of qualified men.³⁸ Ideally, the local medical examiner should be a pathologist with special legal training but, at the present time, there are few pathologists who possess the required qualifications. The supply is curtailed by the lack of medical schools and hospitals providing training.³⁹ However, the medical examiner system's allocation of competent examiners to population needs spreads the supply as far as it will go.

Besides these practical problems involved in a state's changing over to the medical examiner system or improving its existing coroner system there are legal difficulties. In more than half the states the coroner is a constitutional officer so it would seem that the office can not be abolished without amending the state constitution.⁴⁰ Political opposition in most coroner states, it is felt, renders the chance for amendment slight. Under such circumstances it has been suggested that outright duplication of the coroner's functions by superimposing a medical examiner system may be the only practical answer.⁴¹ Georgia's recent adaptation pro-

³¹ VA. CODE §§ 19-21 (1950).

³² MASS. ANN. LAWS c. 38 § 1 (1952).

³³ NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM 39 (1951); PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 114 (1953).

³⁴ Childs, *Rubbing Out the Coroners*, 39 NAT. MUNIC. REV. 494, 495 (1950).

³⁵ Gradwohl, *The Office of Coroner—Its Past, Its Present, and the Advisability of Its Abolishment in the Commonwealth of Missouri*, 13 LABORATORY DIGEST 1 (1950).

³⁶ Snider, *Urge Medical Examiner Replace Coroner System*, Chicago Daily News, Aug. 12, 1954, p. 22, col. 3.

³⁷ These duplicative functions ordinarily account for the greater part of the coroner's office budget. "The 1952 budget of the coroner's office in Cook County was \$258,790. Only \$49,320, about a fifth of the total budget was allotted for the salaries

of professional personnel. . . . Conditions in Cook County could be vastly improved if only half of this appropriation were used for trained personnel and necessary equipment under the medical examiner system." Editorial, *The Merits of the Medical Examiner System*, 19 THE PROCEEDINGS OF THE INSTITUTE OF MEDICINE OF CHICAGO, 46, 47 (1952).
³⁸ Ford, *Medicolegal Investigation of Violent and Unexplained Deaths*, 145 J.A.M.A. 1027, 1030 (1951).

³⁹ *Ibid.*

⁴⁰ Childs, *Rubbing Out the Coroners*, 39 NAT. MUNIC. REV. 494 (1950).

⁴¹ *Id.* at 495. Also see the MODEL POST-MORTEM