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In Kansas**

By George S. Blair

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The Office of County Coroner in Kansas

by

George S. Blair¹

As an elective public official the county coroner has been gradually disappearing since 1877 from the American system of local government. In 1877, Massachusetts abolished the county coroner and instituted a state medical examiner system. Since that time, at least fifteen states have replaced the coroner entirely, or have shorn the office of many of its duties and bestowed them upon more qualified officers, or have raised the qualifications of the office and made it appointive rather than elective. The office still exists as a part of the constitutional or statutory machinery of local government in thirty-three states and as an elective office in thirty states.

The purpose of this study is fourfold: (1) to present the historical development of the office of county coroner; (2) to present its current status in Kansas; (3) to discuss defects in the office of county coroner and to give an account of the state medical examiner system; and (4) to present a proposed plan to replace the coroner in Kansas by the adoption of a state medical examiner system.

Historical Background of the Coroner²

The coroner is the oldest elective officer in the English and American systems of local government, and ranks second only to the sheriff as the oldest of all county officers.³ The settling of the original thirteen colonies was largely by those who came from England, and these people brought with them the ideals, customs and laws to which they were accustomed. The office of county coroner was transplanted by the colonists from England, where it had a long, though not definitely traceable, history.

The name of the office comes from the Latin word "corona," which means crown. The time of origin of the office is not definitely known. Mention of it is made as early as 925 A. D., and it was established as an office of the crown in 1194 during the reign of Richard I (1189-1199).

1. Doctor Blair is Assistant Professor of Political Science at the University of Tennessee. This study originated as a Master's Thesis at Kansas State Teachers College, Emporia, in 1949, under the direction of Dr. C. Stewart Boertman.

2. *Editor's note:* A part of this material on the historical background has appeared in Dr. Blair's article, "The Coroner's Office Never Dies: It Just Fades Away," in *The County Officer*, XVII, 5 (May, 1952), pp. 152-53.

3. John A. Fairlie, *Local Government in Counties, Towns, and Villages* (New York, 1914), p. 112.

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Qualifications for coroner included knighthood and ownership of real property. Its early holder was called "custos placitorum coronae," which means literally keeper of the pleas of the crown. His duty was to safeguard such revenues as might fall to the king, which included the forfeited property of felons, treasure trove, the wreckage of ships, and such valuables as might be found on unidentified and unclaimed dead.⁴ From this right to search the dead grew the duty of investigating deaths from unknown causes or from violence. Today these investigations are the most important duties of the office.

By the reign of Edward I (1274-1307), the coroner had become an established officer in English local government. Edward I advanced the office in two ways: (1) by making it elective where it had formerly been appointive by the king; and (2) by setting forth the duties of the office in statutes. An example of a statement in one of the statutes is the following:

A coroner of our Lord the King ought to inquire of these things, first when coroners are commanded by the king's baliffs or by the honest men of the country, they shall go to the places where any be slain, or suddenly dead, or wounded, or where houses are broken, or where treasure is said to be found, and shall forthwith command four of the next towns, or five, or six, to appear before him in such a place; and when they are come thither, the coroner upon the oath of them shall inquire in this manner, that is, to wit, if it concerns a man slain, if they know the person was slain, whether it were in any house, field, bed, tavern, or company, and if any, and who were there &c. It shall also be inquired if the dead person were known, or else a stranger, and where he lay the night before. And if any person is said to be guilty of the murder, the coroner shall go to their house and inquire what goods they have &c.⁵

This statute extends to cover the cases of persons drowned, those found suddenly dead, and the attachment of criminals in case of violence.

In all, four types of coroners developed in England. These were: (1) ex officio sovereign coroner whose office was an adjunct of a judgeship in the higher courts; (2) franchise coroner whose office was created by charter; (3) borough coroner whose office was found only in boroughs having a separate court of quarter session; and (4) county coroner whose office was in each shire or county.⁶ Be-

4. George E. Howard, *Local Constitutional History of the United States* (Baltimore, 1899), p. 413.

5. 4 Edward I stat. 2 (1278).

6. Edwin R. A. Seligman, ed., *Encyclopedia of Social Science* (New York, 1931), IV, p. 410.

cause of nearness to the people and the nature of his duties, the county coroner has achieved the most recognition of these four types.

In general, the duties of the county coroner in England at the time of American colonial settlement were fourfold: (1) to keep records of all matters pertaining to criminal justice within his county; (2) to collect for the king all goods and chattels of criminals, deodands, treasure-trove, shipwrecks, and royal fish;⁷ (3) to hear appeals of felony and the confessions and abjurations of felony; and (4) to keep records at inquests.⁸

The coroner brought to the American colonies was the county coroner. Records of the New Plymouth Colony show that colonial statutes were enacted concerning the coroner as early as 1636, when the following statute was passed by the General Assembly: "That also one be chosen to the office of Coroner to be executed as neere as may be to the laws practise of the kingdome of Engl. to continue one yeare."⁹ A Mr. William Collyer served as coroner of this colony for a period of years, at least from 1636 to 1646.¹⁰

By 1658, statutes in New Plymouth concerning the duties of the coroner were enlarged to read:

It is enacted by the Court and the Authoritie thereof that incase there shalbee occation for a Corrowner that the next majestrate where such accedent falls shall sitt as Corrowner and execute that office according to the Custome of England as neere as may bee; It is further enacted by the Court as an addition to this order, That such accident falls out and view the Corpes himselve, vnless it shall out att soe great a distance of place as hee cannot goe or some other Ineiutable Impediment doe hinder; and in such case the constable of the Township where such accedent falls shall supply his place; and the Corrowner's enquest to be payed ordinary wages according to the time they are out.¹¹

Concerning the coroner's inquest, records of an inquest exist as early as March 2, 1636, in Plymouth Colony.¹² A statute granting further power of inquiry was passed in July, 1673. This law stated:

In reference to such tat come to vuntimely death It is enacted by the court that noe such pson be buried before such time that a Corroner or Constable where no Corroner is, be Informed of such death vpon the penaltie of five pounds and that such pson or psons

7. The "royal fish" were the whales and sturgeons, and the duty consisted of the disposal of those thrown upon the shore or caught near the coast.

8. *Encyclopedia of Social Science*, IV, p. 410.

9. David Pulsifer, ed., *Records of the Colony of New Plymouth in New England, Laws, 1623-1682* (Boston, 1861), XI, p. 8.

10. Nathaniel B. Shurtleff, ed., *Records of the Colony of New Plymouth in New England, 1633-1640* (Boston, 1855), I, p. 48.

11. Pulsifer, *op. cit.*, XI, p. 158.

12. Shurtleff, *op. cit.*, I, p. 39.

that are most nearly related to such persons soe dieing shall forthwith give notice to the Corroner or Cunstable; and in defect heerof any other pson is heerby bound, haveing knowlidge of it forthwith to give Information as aforesaid and be payed out of the estate of the pson so deceased or by the Treasurer where no such estate is found.¹³

Although all these quoted laws were those of the Plymouth Colony, similar laws were enacted in the other colonies making the coroner a standard officer in local colonial government.¹⁴ In some of the colonies he was elected by the tax-paying freemen at the county meeting, duplicating the early practice of the mother country.¹⁵ In other colonies the power of appointment was retained by the royal governor and was exercised in conjunction with the county meeting or without any local control whatever. Thus, his position as an officer of local government was early established. When colonial charters were changed to state constitutions or new state constitutions were written in the early years of the Revolutionary War, the coroner was continued along with other political institutions.¹⁶

A further measure of the importance attached to this office can be reckoned: an Act of the Congress under the Articles of Confederation in December, 1788, provided for the appointment of one coroner in each county of the Northwest Territory.¹⁷ The policy developed for this territory became the basis for that of future territories obtained by the government of the United States.

When Kansas was created as an organized territory by the Kansas-Nebraska Bill of 1854, the coroner came to the great central plains. At the first session of the territorial legislature in 1855, thirty-three counties were organized,¹⁸ and a later act of the same session created the coroner as part of the governing structure in each county.¹⁹

As first created, the coroner was appointed for a four-year term in each county by the county commissioners or the tribunal transacting business in that county. His principal duties were to serve as conservator of the peace throughout his county, hold inquests of violent and casual deaths happening in his county, and to succeed

13. Pulsifier, *op. cit.*, XI, p. 235.

14. Howard, *op. cit.*, *passim*, e.g., for the development of the office of coroner in Pennsylvania, see p. 382; in Virginia, see p. 395; in Maryland, see p. 405.

15. Bruce Smith, *Rural Crime Control* (Portland, Maine, 1933), p. 187.

16. See Constitution of the Commonwealth of Massachusetts (1780), Chap. II, Sec. I, Art. IX; also the Constitution of the State New Hampshire (1783), Part II, Art. 46.

17. Howard, *op. cit.*, p. 415.

18. *Kansas Territorial Laws*, Session, 1855, Chapter 30.

19. *Ibid.*, Chapter 27.

to the office of sheriff in event of its vacancy by death or for any other reason, in which capacity he would serve and execute all processes and writs and perform all other duties of the sheriff.²⁰

The coroner had no lawfully set salary, but collected fees for his services. The fees were regulated by law, and varied from three dollars for viewing a body to ten cents for each oath administered. These fees were to be paid from the estate of the deceased, by the master if the deceased were a slave, or from the county treasury if the deceased had no property.²¹

When Kansas became a state in 1861, the county coroner was not made a constitutional officer in the pattern of local government. However, he continued as a local officer, obtaining his office by popular election in some counties and by appointment of the county commissioners in others.²² With the creation of an increasing number of counties, the place and need of the coroner became more evident, and his office was created by legislative enactment in 1868.²³ This statute enrolled the coroner among the elective officers of local government and granted him four general powers to be used in the furtherance of his principal duties. The duties were primarily those of holding inquests on the bodies of persons whose deaths were suspected to have been caused by unlawful means or by unknown causes. The powers were: (1) to issue subpoenas within the county for witnesses; (2) to summon, whenever he or the jury believes it necessary, one or more physicians or surgeons, who shall be allowed a reasonable compensation by the county commissioners for examining the deceased; (3) to cause the arrest of any person found to be criminally liable for the death; and (4) to act as sheriff when there is no sheriff or when he is legally restrained from performing his duty. He has held this place to this day with but little change in the fundamental laws underlying his office.

Current Status of the Office of Coroner in Kansas

Basically, the powers and duties of the coroner in Kansas are essentially the same today as set forth in the statute of 1868.

Any citizen of Kansas who meets the requirements to vote in the county of his residence is eligible to be the coroner in his county as there are no technical or professional qualifications for the office.²⁴

20. *Loc. cit.*

21. *Ibid.*, Chapter 119, Section 7.

22. William G. Cutler, ed., *History of the State of Kansas* (Chicago, 1883), pp. 311, 880, 917, 1154 and 1313.

23. *Kansas General Statutes* (1868), Chapter XXV, Art. IX, Sec. 116-134.

24. *Kansas G. S.* (1949), 19-1001.

The coroner is elected, with other county officers, at the general election for a two-year term, and may be re-elected for any number of consecutive terms. It is an office which the political organizations do not have to rotate among would-be office-holders, for usually party regulars must be carefully exhausted to find a candidate willing to serve as coroner.

Before assuming his duties, the coroner must give bond, varying in amount from \$500 to \$5,000, to the state of Kansas, with at least two sureties approved by the county clerk. The bond itself must be filed with the county clerk within twenty days after official notice of election or within twenty days after the commencement of the term of office for which he was elected.²⁵

The compensation for the office varies with the size of the county. In counties under 70,000 population, the coroner receives \$3.00 per day for holding an inquest, ten cents a mile on official business, and certain minor fees at the sheriff's rate for issuing subpoenas, summoning a jury and other similar duties.²⁶ Sedgwick, Shawnee, Wyandotte and Johnson counties, the four most populous in the state, each has its own salary scale. In Sedgwick county, the salary is \$3,000 per year plus an automobile allowance of \$62.50 per month.²⁷ In Shawnee county, the salary is \$1,800 per year, plus an automobile allowance of \$25.00 per month.²⁸ Wyandotte county provides a salary of \$3,312 per year.²⁹ In Johnson county, the salary is \$1,200, plus seven cents a mile on official business.³⁰

Deputy coroners may be appointed in Wyandotte and Sedgwick counties. When such appointments are made, the coroner appoints the deputy in writing and files the appointment with the county clerk. After taking the proper oath, the deputy may perform the duties and functions assigned to him. He holds office during the pleasure of the coroner.³¹ The two deputies allowed to Wyandotte county may receive \$1,300 per year each payable from the general funds of the county.³² In Sedgwick county, the coroner may appoint

25. *Kansas G. S.* (1949), 19-2602, 19-1001.

26. *Ibid.*, (1949), 28-111, 28-169, 28-136; the statutes refer to counties under 90,000, but Senate bill No. 197, Session of 1953, makes provision for the coroner in counties of more than 70,000 and less than 100,000 population (i.e., Johnson county). This bill is now law and amends *Kansas G. S.* (1949) 19-1016.

27. House bill No. 331, section 4, Session of 1953, amending *Kansas G. S.* (1949), 28-606. (Now law.)

28. House bill No. 83, section 6, Session of 1953, amending *Kansas G. S.* (1949), 28-213. (Now law.)

29. House bill No. 422, section 11, Session of 1953, amending *Kansas G. S.* (1949), 28-310b. (Now law.)

30. Senate bill No. 197, section 2, Session of 1953, amending *Kansas G. S.* (1949), 19-1016. (Now law.)

31. *Kansas G. S.* (1949), 19-1018, 19-1019, 19-1020, 19-1022.

32. *Ibid.*, (1949), 19-1021.

one deputy, with payments of \$10.00 per day up to a maximum of \$750 per year.³³

The office of coroner, as that of other county offices, is declared vacant if the incumbent dies, resigns, moves out of the county, is convicted for an infamous crime or violating his oath of office, refuses to give or renew his official bond, fails to provide bond within the time allowed, has his election or appointment voided by a competent tribunal, or is removed. Grounds for removal are conviction of being voluntarily intoxicated in a public place, conviction on charges of gambling or willful misconduct in office.³⁴ In case of vacancy caused by any of the above reasons, or because of no candidate, the governor appoints a person to the office to complete the unfinished term. The appointee holds office until the next general election and is then eligible for election.³⁵

At the present time the county coroner in Kansas has the following specific powers and duties:

(1) To hold inquest on the bodies of persons in which death is suspected to have been caused by unlawful means or an unknown cause.³⁶

(2) To summon six citizens of the county to appear before him at the time and place of the inquest to serve as a coroner's jury. In case the inquest is being held upon a death of an inmate of any public or private hospital or asylum, no member of the jury can be in any way connected with the institution.³⁷

(3) To administer the oath to his jurors.³⁸

(4) To issue subpoenas within his county for witnesses, to have authority to enforce their attendance, and to punish them for contempt in disobeying his process.³⁹

(5) To order the arrest of a person charged by the jury if he be present to make a warrant requiring the sheriff or other officer of the law to take the accused before a justice of the peace.⁴⁰

(6) To issue a warrant to the sheriff or any constable of the county requiring him to arrest the person so charged and take him before a justice of the peace.⁴¹

(7) To return to the county clerk the inquisition, the written evidence, and a list of witnesses who testified material evidence.⁴²

(8) To deliver the body of a deceased person to friends if there

33. House bill No. 331, Sec. 4, Session of 1953, amending *Kansas G. S.* (1949), 28-606. (Now law.)

34. *Kansas G. S.* (1949), 19-2608.

35. *Ibid.*, 19-1023.

36. *Ibid.*, 19-1003.

37. *Ibid.*, 19-1003, 76-1228.

38. *Ibid.*, 19-1004.

39. *Ibid.*, 19-1005.

40. *Ibid.*, 19-1010.

41. *Ibid.*, 19-1011.

42. *Ibid.*, 19-1014.

be any, and if not to arrange for a decent burial to be paid from property found with the body. If the deceased has no property, the charges will be paid from the county treasury.⁴³

(9) To summon one or more physicians or surgeons to make scientific examination whenever he or any member of the jury believes it is necessary.⁴⁴

(10) To act as sheriff if there is no sheriff, if the sheriff does not perform his duty, or if he is legally restrained from performing his duty.⁴⁵

(11) To complete any unfinished business on hand when he assumes office and to make the same a matter of record in his office.⁴⁶

(12) To make a report on or before the 10th day of each month to the state vehicle department of the death of any person within his jurisdiction as a result of accident involving a motor vehicle and the circumstances concerning such accident.⁴⁷

(13) To make an inventory and record of the kind, amount, and location of all personal property owned by the county and located in or under the supervision of his office. A copy of this record must be filed with the county clerk by December 31 of each year.⁴⁸

(14) To hand over to his successor all laws and other property given to him as the incumbent of the office. If he refuses, he can be charged the full amount it would cost him to purchase the property for himself plus the cost of the suit.⁴⁹

(15) To hold all property coming into his possession until authorization for its disposition comes to him from the proper official.⁵⁰

(16) To succeed immediately and perform all the duties of the sheriff if a prisoner is taken from the custody of the sheriff and lynched.⁵¹

(17) To ask for help to recapture a prisoner who escapes his custody.⁵²

(18) To serve and execute processes of every kind and to perform all other duties of the sheriff when acting in that capacity.⁵³

43. *Ibid.*, 19-1015; for disposition to the Kansas Medical Center, see *Kansas G. S.* (1951 Supplement), 65-901, 65-902a, 65-904.

44. *Kansas G. S.* (1949), 19-1017.

45. *Ibid.*, 19-1002; Here it must be noted that there seems to be some need of clarification in the Kansas statutes. It is true that the statute referred to states, "When there shall be no sheriff in an organized county, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff be elected or qualified"; or if the sheriff goes to jail the coroner "shall be keeper thereof during the time the sheriff shall remain a prisoner therein." But the Kansas statutes also state (in 19-804) that "Whenever a vacancy occurs in the office of sheriff of any county, the undersheriff of such county [shall] serve until a sheriff shall be appointed by the governor . . ." The latter is the more recently enacted law, and it is evidently a good example of how the office of coroner is being stripped of some of its former legal functions. Also, note the conflict that results in reference to (16) above as to the statutory provision in event of a lynching.

46. *Ibid.*, 19-2607.

47. *Ibid.*, 8-526.

48. *Ibid.*, 19-2624.

49. *Ibid.*, 45-109.

50. *Ibid.*, 62-1807.

51. *Ibid.*, 21-1007.

52. *Ibid.*, 62-1816.

53. *Ibid.*, 60-2511.

(19) To perform autopsy, or order and direct a physician or surgeon to perform such autopsy if he believes it to be in the public interest that the cause of death of a deceased person be so ascertained. This power was long assumed by the coroner, but actual legislative grant of this function was not enacted until the 1949 session of the legislature.⁵⁴

The office of coroner is part of the local machinery of criminal justice and one of the agencies through which citizens seek to protect themselves against crime. Through his power of inquest, he investigates deaths in which there may have been an element of criminality, examines all circumstances bearing upon death by accident, and questions witnesses under oath. In the performance of these duties, any blunders of the coroner carry with them a terrible seriousness that only that part of the public directly involved can fully appreciate.

Defects in the Office of County Coroner and an Account of the State Medical Examiner System

The author assumes it is clear that this monograph refers to the office of coroner itself and not to the personalities or capabilities of any particular group of individuals. The defects in the office of coroner are inherent in the system. As a result of a survey conducted in 1927 on the office of coroner and the performance of the duties of the office, the National Research Council reported:

Our own investigation into the conduct of the coroner's office in the communities selected for study, as well as the previous reports from other localities, give clear evidence that under the best of conditions the work demanded of the coroner is improperly done. The faults are inherent in the system, and are not necessarily those of the individual who may happen to function as coroner. The satisfactory coroner is such in spite of, and not because of, the system under which he works; if to the faults of the system are added those of an inefficient official, then the results are lamentable and subversive of justice.⁵⁵

Technical incompetence in either medicine or law or both is one of the defects of the office of coroner as it exists today. Referring to this fact, Dr. John L. Lattimore, Topeka pathologist and former member of the state legislature from the Thirty-fifth District, has said, "There are dozens of murders in Kansas each year that are

54. *Ibid.*, 19-1024, 19-1025.

55. Oscar T. Schultz, "Our Antiquated Coroner System," *Hygeia*, VIII (October, 1930), p. 911; "Those attending agreed there is a lack of uniformity of duties, obligations and privileges of coroners, inequality of compensation for services and lack of training. It was felt that an organization would do much to elevate the prestige of the office by correcting these deficiencies." From the minutes of Dr. Paul D. Adams, acting secretary, Northeast County Coroners Association, meeting at Lyndon, Kansas, September 20, 1951. *Kansas Government Journal*, XXXVII, 11 (November, 1951), p. 677.

either undetected or detected at such late date that prosecution is impossible.”⁵⁶

In 1948 the Bureau of Government Research at the University of Kansas conducted a survey of the experience of county coroners in Kansas. The results of the survey are shown in the following table.⁵⁷

TABLE I—Occupations of Kansas Coroners in 102^a Counties Replying to a Questionnaire, March, 1948

Occupation	Elected	Appointed	Total
Physician or surgeon ^b	54	8	62
Undertaker	23	3	26
Assistant undertaker	1	1	2
Osteopath	5	1	6
Chiropractor	1	0	1
Pharmacist	2	0	2
Justice of peace	0	1	1
Store clerk	1	0	1
(No coroner)	1	0	1
Total	88	14	102

a Kansas has 105 counties.

b Kearny, Stanton, and Wichita counties had no practicing physicians or surgeons at the time of this survey.

The results show that over half the county coroners are doctors, but the bare number can be misleading. To perform his tasks efficiently, the doctor serving as coroner should have a thorough knowledge of chemistry, anatomy, blood, tissue, and the causes of death.

A knowledge of medicine on the part of the coroner is no more desirable than legal training. The findings of the coroner may be quite worthless as legal evidence. In fact, his legal investigation is often not only futile, but can be actually perverse to justice, in that it may reveal facts prematurely. Information that should be presented only to the prosecuting attorney or to the grand jury is made public, giving witnesses a chance to disappear or to cover up for themselves in a later trial.

Joseph Du Vivier, a former assistant prosecuting attorney of New York City, advocated the abolishment of the present coroner system, and said the following in reference to the legal aspects, “Every case in which there may be criminal responsibility must be watched. The body of the deceased is barely cold before the experienced

56. Newell N. Jenkins, “The County Coroner in Kansas,” *Your Government*, III, 8 (April 15, 1948), Bulletin of the Bureau of Government Research, University of Kansas, Lawrence, Kansas.

57. *Loc. cit.*

prosecutor begins to guard against the probable mistakes of the coroner."⁵⁸

A second defect of the office is the manner in which the inquest is conducted. It is directly related to the lack of technical competence just mentioned. As the office of coroner first developed legal training was more emphasized than medical.⁵⁹ The coroner was more like our present-day attorney or constable. He took the initiative in all inquiries relating to the causes of death by violence or suspicion of violence and submitted medical questions to a physician. Somewhere in the development of the office the physician superceded the lawyer. So, today, the principal figures at a coroner's inquest are the coroner and a six-man jury. The value of the inquest in all cases is doubtful, as any evidence presented that points to the guilt of an individual must be repeated at a later date before a court of law when the accused is brought to trial. Often such evidence is valueless, and it may lead to actual obstruction of crime detection because of careless handling by one inexperienced in legal matters.

In 1913 a nine-member committee investigated the efficiency of various county offices for the Municipal Association of Cleveland, Ohio. Among their recommendations in reference to the coroner, the committee proposed that inquiry into the circumstances surrounding violent deaths should be by an official with legal training. They suggested that the prosecuting attorney should be responsible for inquests, calling upon a medical examiner to furnish information as to the causes and nature of death.⁶⁰

A third weakness of the office is elective selection of the official, subject to the whims of the electorate. Any citizen is eligible for the office, but only a few are capable of performing its functions efficiently. Its being a political office has probably tended to lower the standards of the coroner's office in general.⁶¹

A fourth weakness is lack of funds with which to carry out the duties. This is especially true if the coroner himself is not a physician and must call in an aide to perform each autopsy. Funds to pay the physician must be appropriated by the county commissioners in each case, and the coroner is often hesitant to present requests to the commissioners for such help. If the materials removed from

58. Schultz, *op. cit.*, p. 910.

59. Samuel W. Abbott, "Defects of the Coroner System," *The Forum*, VII (August, 1889), pp. 694-95.

60. Oscar T. Schultz, "The Coroner's Office," *The Annals of the American Academy of Political and Social Science*, XLVII (May, 1913), pp. 112-19.

61. There was an idea present in 1951 in Kansas of making the coroner an appointive official. See editorial, *Emporia Gazette*, March 12, 1951.

the body are sent to a laboratory for analysis, this involves additional expense that must be paid from the county fund.⁶²

A fifth shortcoming is the social and economic pressures sometimes exerted on the coroner not to perform autopsy unless evidence points overwhelmingly to foul play. This is perhaps especially true of certain cases of death in the families of community leaders. To perform autopsy may be to commit "economic suicide" because of the pressure which can be brought to bear by the family of the deceased when the coroner is a business man.⁶³

A sixth defect is the lack of a central authority to co-ordinate the functions of the coroner with those of other officers on the state and local level. The coroner should work closely with the offices of sheriff and prosecuting attorney within his county, and the Kansas Bureau of Investigation and the Attorney General's office on the state level. But often this co-operation is lacking, and there may even be friction among the offices.

A seventh defect inherent in the office is its possible misuse by unscrupulous lawyers, undertakers, or medical practitioners.

An eighth defect of the office takes into partial consideration all or most of the other seven. It is the obstruction of crime detection, investigation, and prosecution caused by the inefficient fulfillment of the duties by the coroner. The relationship of the coroner with the Kansas Bureau of Investigation will serve as an illustration. This Bureau was created to assist counties and cities in solving major crimes, yet its officials estimate that in ninety-five percent of their cases they are not called upon until several days after a crime has been committed. It has not been unusual for them to find that: (1) the county coroner's office has caused the body to be removed and evidence has been destroyed by the coroner or law enforcement officers; (2) the coroner has overlooked or misinterpreted wounds and powder burns—in one recent case a coroner interpreted a gunshot wound to be a knife stab; (3) the embalmer, with the consent of the coroner, has filled the body with embalming fluid, changing the chemical structure of the body; or (4) the coroner has shown complete disregard for the technical work of dissection, chemical analysis, and examination of the body.⁶⁴

62. According to O. D. Harris, coroner of Lyon County, Kansas, twenty-five persons died of violent deaths in that county in 1948. Concerning these deaths, two autopsies were held. In one case, expenses were borne by the family; and in the other case, twenty-five dollars was appropriated by the county commissioners to pay for a chemical analysis of organ specimens sent to the Laboratory of the University of Kansas Medical School. (Interview, March 28, 1949.)

63. Jenkins, *op. cit.*

64. *Loc. cit.*

The defects in the office of coroner have led to strong demands for their remedy. The medical examiner system has been the most frequently suggested remedy. The American Medical Association has reported the coroner inefficient and incompetent, and has recommended the medical examiner system as essential to modern conditions.⁶⁵ The Kefauver Senate crime investigating committee advocated the medical examiner system and elimination of the office of coroner.⁶⁶ Dr. Glen R. Shepherd, M. D., in one of his regular columns in the *Kansas City Star*, reviewed the medical examiner system and urged its adoption for the state of Kansas.⁶⁷

The state medical examiner system came into being in Massachusetts in June, 1877, when the office of coroner was abolished by an act of the state legislature. The essential features of the Massachusetts plan were: (1) the separation of the medical from the legal duties involved in the investigation of the cause of death, the former being entrusted to medical officers, and the latter to qualified legal functionaries; (2) the abolition of the coroner's office and the coroner's jury; and (3) the limitation of the number of medical officers.⁶⁸

The mode of procedure in a case of death by violence under the Massachusetts law is as follows: The medical examiner of a district is notified by the police or city authorities of the finding of a corpse. The medical examiner proceeds at once to the place indicated, takes charge of the body and makes an examination as to the cause of death. If the cause of death cannot be determined by external examination, the examiner summons two or more discreet persons as witnesses and makes an autopsy after obtaining proper authority. If the autopsy gives proof or reasonable suspicion that death was caused by violence or an act of another party, the medical examiner reports his actions to the district attorney and to the municipal judge of the district, who holds an inquest upon the case without a jury. The municipal judge summons such witnesses as he may deem necessary to conduct a complete investigation. At such inquests, the medical examiner is a key witness. He is often called to testify in higher state courts at trials which result from the findings of inquests in cases of death by violence.⁶⁹

65. "Medical Science and the Administration of Justice," *The Journal of the American Medical Association*, CXXXVIII (November, 1948), pp. 751-52; also see James Finan and Frederic Sondern, Jr., "The Scandal of Our Blundering Coroners," *Readers Digest* (November, 1949), pp. 111-15.

66. See the Associated Press story concerning the Kefauver committee report and its support by Dr. Richard Ford of Harvard University's Department of Legal Medicine. *Kansas City Star*, June 19, 1951.

67. *Kansas City Star*, November 29, 1950; the *Star* also published a series of four articles on the subject in reference to Jackson County, Missouri, January 9, 14, 21, 25, 1952.

68. Abbott, *op. cit.*, pp. 694-702.

69. *Ibid.*, p. 702.

In 1917, New York City adopted the medical examiner plan granting the examiners even broader powers. The chief examiner is appointed by the mayor and he has a corps of assistants and a central office equipped with ample laboratory facilities.⁷⁰ The office of the Chief Medical Examiner of New York City is considered today as the outstanding example of the service that such an office can render to the public in that the equipment is the most modern and scientific known and the examiners are among the best trained anywhere in the United States.

Then, in 1926, the state of New Jersey made the adoption of the medical examiner system optional with its two first-class counties. Sussex county, of which the city of Newark is part, adopted the plan the same year. Here the county coroner was retained but stripped of his powers. These were vested in a county physician whose two principal duties are: (1) to investigate causes of violent and suspicious death; and (2) to serve as a medical adviser in the criminal courts.⁷¹ Thus, his duties are more nearly those of the medical examiner in other states than those of the office of county physician as it exists in Kansas.

The ideas of the medical examiner plan began drifting to the Midwest in the middle 1920's. During these years, a survey of the courts and officers who administer justice in Missouri and the practices of their administration was made. The role of the coroner was studied by Raymond Moley who reached this conclusion:

Ultimately the office of coroner should be abolished but on account of the fact that he is a constitutional officer [in Missouri] such a change might not be accomplished in a short while. Pending such abolition, the office should be shorn of certain of its functions which should be vested in a medical examiner who should in large cities be paid a fixed salary sufficient to draw to the service expert pathologists. The judicial function now performed by the coroner should be temporarily retained by the coroner and if the medical examiner decides that an inquest is necessary, the coroner should conduct it. Under such a system the coroner's jury should be abolished. There should also be a state pathologist to be appointed by the governor who would assist the various county medical examiners in standardizing their work.⁷²

About the same time, the general improvement of the medical examiner system over the old coroner system became generally

70. H. S. Gilbertson, *The County, the "Dark Continent" of American Politics* (New York, 1917), p. 134.

71. Schultz, "Our Antiquated Coroner System," p. 912.

72. Raymond Moley, *The Administration of Criminal Justice in Missouri* (St. Louis, 1926), p. 15.

recognized. In 1928, the National Research Council stated in a bulletin:

It [the office of the medical examiner] is so much better than any coroner's office in the United States that it points the way for the future. The widespread adoption of the medical examiner system, properly supported financially and aided by the establishment of scientifically conducted medico-legal institutes would quickly raise forensic medicine to a plane so much higher than its present level, that we would soon look back on the present conditions with a feeling of astonishment that conditions so intolerable had so long endured.⁷³

Since then, several comparisons of the two systems have been made. One of the most recent was by the American Medical Association, which stated:

In most states the coroner's office is so incompetent in the acquisition and interpretation of medical facts that only when murders have been witnessed or when bodies bear wounds regarded as being obviously homicidal are the deaths likely to be reported as murders. In regions where competent medical investigations of such crimes are conducted, in 10 to 20 per cent of all murders the crime appears to be unwitnessed and the body does not display external wounds that can be regarded as indicative of homicide. With reasonable certainty it may be said that several thousands of murders pass unrecognized each year in the United States because of the absence of a competent agency for the acquisition of medico-legal information.

Unfortunately, nonrecognition of murder is not the only danger inherent to the coroner system as it functions in most areas. Not only has the United States a greater incidence of recognized murder per unit of population than any other civilized nation in the world, but it also has the highest rate of unsolved crime. Scientific evidence which could aid in the apprehension and conviction of the criminal is rarely acquired by the average coroner's office. Recognition of evidence pertaining to the precise nature of the instrument of death, the sequence of injuries, the time of injury and the time of death, the identity of the decedent and the various traces that might associate the criminal with the crime requires a degree of expertness and experience on the part of the medical investigator that is rarely if ever found in an office administered by an elected official whose only qualification is that he or she is a registered voter of the county. Failure to acquire available information of these kinds often leads to failure to arrest, or else to false arrest, to wrongful conviction and to unduly protracted or unsuccessful prosecution.

A few states have already established medical examiner systems, headed by a competent pathologist with experience in legal medicine

73. Oscar T. Schultz and E. M. Morgan, "The Coroner and the Medical Examiner," *Bulletin*, No. 64, National Research Council, Washington, D. C., 1928.

and staffed by physicians within the state—these last serve on a part time basis. The function of such a system is to provide reliable facts which would not otherwise be available. The purpose of this fact finding is the ever closer approximation of law and its administration to the fullest justice. Justice can neither show fear nor favor, bias nor bigotry. It can tolerate neither ignorance nor charlatantry. In many parts of the United States the people have suffered, and are suffering, under these perversions of justice.⁷⁴

The office of county coroner has been gradually disappearing from the American system of local government either because of the ineffectiveness of the office or because of the inefficient administration of the office. Fifteen states and several local jurisdictions no longer utilize this office as it has been traditionally known. One of four general practices has been substituted. These general practices are: (1) eliminating the office of coroner and assigning the coroner's inquest as a function of the justice of the peace; (2) eliminating the office of coroner and charging the county attorney to perform the coroner's inquest; (3) keeping the office of coroner but transferring the medical responsibilities of the office to qualified medical officers; and (4) replacing the office of coroner with a system of trained medical examiners.⁷⁵

A Proposed Plan for the State Medical Examiner System in Kansas

Recognition by the Legislative Council in 1948 of the inefficiency in the existing coroner system in Kansas led to the first steps which may in time entirely replace or supplement the coroner with a system of medical examiners. At its March, 1948, meeting, the Council presented a proposal (No. 23) to study the office as it exists and to propose a change to the medical examiner system.⁷⁶ The major purpose behind the study was improvement of administration in the coroner's office to assist the Kansas Bureau of Investigation in handling all cases in which crime might be involved.

Little research was done on the subject by the Council's Committee on Procedure and Budget because studies of other more

74. "Medical Science and the Administration of Justice," *The Journal of the American Medical Association*, November, 1948, pp. 751-52.

75. (1) is now used in Arizona, Florida, Nevada, New Mexico, Oklahoma, Texas, Utah, Vermont, and Nassau County, New York; (2) is employed in Nebraska, in counties of 40,000 or less in Washington, and in Jefferson and Oswego counties, New York; (3) is used in Connecticut and Maryland; (4), the medical examiner system, is used in Maine, Massachusetts, New Hampshire, Virginia (where the examiner retains the title of coroner), and in local jurisdictions in California, New York, and Washington. See George S. Blair, *op. cit.*, pp. 152-54.

76. Frederick H. Guild, "March Legislative Council Meeting," *Kansas Government Journal*, XXXIV, 4 (April, 1948), p. 28.

pressing proposals were required. Two benefits were derived from the study, however: (1) passage by the legislature in 1949 of House bill No. 145 to grant the coroner the legal power to perform autopsy;⁷⁷ and (2) forwarding of the medical examiner proposal (No. 23) without recommendation to the House of Representatives in the 1949 session.⁷⁸ On February 3, 1949, Proposal No. 23 was directed to the House Committee on Hygiene and Public Health.⁷⁹ This committee discussed the proposal and formulated a plan for the abolition of the present system of county coroners.⁸⁰

In general, this plan called for the creation of a three-man state medical board. The members would be the Governor, Attorney General, and Dean of the University of Kansas Medical School. This board would appoint a state medical examiner who would serve for a two-year period with eligibility for reappointment. He would be a salaried official and would be chosen on the basis of scientific training, executive ability, and willingness to co-operate with law enforcing agencies.

Attached to the office of the state medical examiner and directly under his supervision would be a modern and scientifically equipped laboratory to aid in the detection of crime. The laboratory would be fully equipped to perform chemical analysis of organs sent there, have a Keeler Polygraph (lie detector) and other modern equipment for the use of the entire state. The estimated cost of construction of such a laboratory was \$50,000. The estimated annual expenditure for its maintenance and operation was between \$15,000 and \$25,000, which would be borne by the state. The construction and maintenance of the laboratory would not be an entirely new or additional expenditure, however, as the present state health laboratory and the Kansas Bureau of Investigation crime detection laboratory would be incorporated into the center.

In addition to supervising this laboratory, the state medical examiner would have three principal duties and powers: (1) to determine the cause of death in all cases unattended by a doctor or those deaths in which foul play is suspected; (2) to designate certain qualified people as deputy examiners to carry out preliminary examinations; and (3) to require notification within twelve hours

77. Kansas G. S. (1949), 19-1025.

78. Franklin Corrick, ed., *Regular Report and Recommendations of the Kansas Legislative Council*, Part I (Topeka, Kansas, 1948), p. 136.

79. *Journal*, House of Representatives. Topeka, Kansas, February 3, 1949.

80. The following six paragraphs are based on information received in an interview with Dr. John L. Lattimore, Topeka pathologist and then member of the House Committee on Hygiene and Public Health, March 9, 1949.

of deaths unattended by a doctor, deaths in which foul play is suspected, or deaths in which the diagnosis of cause of death is not evident.

To aid the state medical examiner in the performance of his duties, district medical examiners would be appointed for prearranged districts of the state. Some of these districts would include only one county and other districts would combine two or more sparsely populated counties. The district medical examiner would be appointed by the state examiner for a two-year term on the basis of previous medical training. To assist the district examiner in performing his duties, special training would be provided by the state in: (1) the importance of his functions in relation to other state agencies, such as the Kansas Bureau of Investigation and the Division of Vital Statistics; (2) the method of handling evidence, performing examination and autopsy; and (3) the manner of removing organs to be saved for chemical analysis.

One advantage that would facilitate changing to the medical examiner system in Kansas is the fact that the coroner is not a constitutional officer of local government. His office was created by legislative enactment in 1868, and it can be abolished by similar action on the part of a future legislature. There is a disadvantage associated with the plan in the terms of original expense, but once underway the plan would operate as economically, if not more economically, than the present system of county coroners, and would result in far better service to the citizens.

At the present writing (March, 1953) no further action in putting the medical examiner system into operation has taken place in Kansas. That it has been and will be seriously considered, however, is clear.

It seems safe to state that one of two courses will be taken in the state of Kansas: (1) the county coroner will be eventually abolished as an elective public official in Kansas local government and replaced by a system of state and district medical examiners; or (2) the coroner will remain as a local officer with many of his present duties entrusted to officials whose training and background will more nearly fit them for the efficient performance of these duties.

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