THE CORONER AND THE COMMON LAW

In Five Parts

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The Coroner and the Common Law

I. Introduction

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ONE OF THE STATUTES of the State of California (Section 27491 of the California Government Code) declares, "It shall be the duty of the coroner to investigate, or cause to be investigated, the cause of death of any person reported to the coroner as having been killed by violence, or who has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or who has committed suicide."

In addition to this basic statement, there is much more to this section of the California Government Code. It establishes the manner in which the investigations may be conducted, and it outlines the powers of the coroner in the effective pursuit of his duties. Together with similar sections of the codes of the several counties, it further authorizes and defines the coroner's official activities.

While this codification of the duties of the coroner is relatively new in California,* the office itself and the statutory authorization to inquest are among the most ancient of English common laws, from which many of ours are derived. The office of coroner is so old, in fact, that the actual date of its beginning is unknown, but it is one of the many old Saxon institutions which were adopted by the Normans after their conquest of England and so found their way into the English statute books.

Regardless of the date of its origin, the office of coroner is one of the few remaining offices in the modern scheme of things that has persisted with little change both in England and in much of America since the English colonists arrived in this country carrying with them many legal precepts of the old country. The original title *custos placitorium coronal* (keeper or guardian of the crown) was eventually corrupted to "cornaus," then through various transitions became "coronator," "crowner," and finally in the fourteenth century, "coroner." The coroner was an officer of the crown and he was one of the first of the king's legal assistants.

As early as 925, the office of coroner is mentioned in the Athelstan Charter to Beverly. This was an honorable office, and none but a lawful and discreet knight was chosen as crowner. The founding of the office and its investment with authority were in part due to the anxiety of the people over the increasing powers of the sheriffs. The coroner was required to keep an exact record of the pleas of the crown, thus obtaining the duties of recorder. He was charged in addition with the responsibility of confiscating revenues due the king by the forfeiture of chattels belonging to felons, and as such was a collector of internal revenue. He inquired into all felonies. In

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*The Coroner's Act was passed by the California Legislature in 1876.

instances where homes had been feloniously entered and violated he was required to "proceed immediately" to the scene of the entry and conduct an investigation of the robbery. In this capacity he assumed certain police powers. The coroner had the major burden among the king's officers of bringing criminals to justice, and consequently was known as a conservator of the peace. At one time in English history he was required to inquire concerning "treasure trove" and to report his findings to the king. He heard accusations and appeals from accusations of rape, examined wounds and investigated mayhem. He pronounced judgment upon outlaws and in this capacity became an advocate. He was empowered to pursue persons (besides the principal culprits) who had foreknowledge and had not given warning in cases of murder or burglary.

The coroner was responsible for carrying out regulations concerning deodands—that is to say, the things or chattels that caused death by misadventure, such as an ox that killed a man. It was the duty of the coroner to seize the deodand and have it or its monetary value forfeited to the king. If a man were drowned at sea an entire vessel might be forfeited. As late as 1838, a coroner's jury levied a deodand forfeiture of 1,500 pounds on the boiler of the S.S. *Victoria*, which had exploded and caused a loss of life. These forfeitures were generally bestowed upon the church for the good of the soul of the persons deceased, in the manner of alms. This legal principle and its legal sequence of conviction and indemnification represent the beginning of our present system of industrial compensation.

The coroner was also required, on behalf of the crown, to seize all the goods and chattels of those who were found guilty of suicide—suicide at that time being a felonious crime. In certain circumstances he was also concerned with other fiscal rights of the crown and at times performed part of the duties of tax collector.

Although charged by law with these numerous duties, many coroners of the day devoted the major portion of their attention to securing profit for the crown rather than searching for the truth in felonious matters or inquiring into the mechanisms of violence and causes of unexplained deaths. With the passage of time and for various reasons the office of coroner lost much of its power. Accumulated experience led to a clearer definition of the duties of the various officers of the king, and many of the duties of the coroner were delegated to other agencies. With police responsibilities expanding as society became more complex, a more elaborate scheme of law enforcement was developed and the police powers of the coroner declined, except where the office was combined with that of sheriff. Tax collecting became a specific, distinct and increasingly important necessity, for which a separate office was established. Many of the other miscellaneous functions of the coroner's office were also assumed by other existing bureaus or newly developed departments.

The judicial functions of the coroner were eliminated by the adoption of the Magna Charta in 1215, the abrogating clause stating, "No sheriff, constable, coroner, or other of our bailiffs shall hold pleas of our Crown." The statute De Officio Coronarius (for Edw. I, Statute II) redefined the coroner's powers and duties; and although later repealed, this statute forms the basis for our modern laws regulating the coroner's responsibilities. The office may still be, and often is, combined with that of sheriff of the same county, or with that of public administrator. In such a dual role, the coroner retains much of his historic importance, for he may simultaneously assume the responsibilities of all three offices. It is also, perhaps, of interest to remember that in his singular capacity the coroner is still the only state or county official who has the power to arrest the sheriff.

As originally established after the Magna Charta, the coroner's office had both the power of inquest and the power of investigation. With the evolution of more modern systems of legal investigation and law enforcement, the investigating powers of the coroner's office were assumed by the police, and the coroner was reduced to the single duty of holding an inquest, which was only a fact-finding procedure. He was without other authority either judicial or punitive and his findings were not admissible as evidence in a superior court of law. The many limitations reduced the coroner's office to so low a level of responsibility that it lost much of its public dignity and esteem. It became obvious that the office could not function effectively without the power of inquiry, and in 1926 the powers of investigation were reconferred upon the coroner in the United States. From this time to the present there has been a gradually expanding, and recently a rapidly growing, recognition of the importance of the functions of the office of coroner, or medical examiner.

Throughout the past centuries repeated studies of the coroner's office have been made and the qualifications of the coroner have been recurrently evaluated. Innumerable investigators and fact-finding boards have made reports and recommendations. There has been general accord in these reports that the relationship of the coroner to the public should be clarified—in some respects specifically altered—and that the facilities of the office should be further developed and improved. Because of the similarity of the legal systems in England and in the United States, the many expressions of dissatisfaction with the structure and stature of the office and the urge

to investigate the problems have had not only a long historical background but a wide international basis. In 1825, Thomas Wakeley, then the editor of a London newspaper, bitterly opposed the system of appointing attorneys, undertakers and ignorant laymen to coronerships. Like many reformers, he felt that he would make a good incumbent, and he did. He was elected to the office of coroner in 1839 after spending a fortune during the preceding 14 years of electioneering. He was 23 years in office, constantly fighting for reform and improvement. It was through his efforts that the coroner in England customarily is a practitioner of medicine.

English legal tradition has a strong influence upon the American system and, following this early example, Philadelphia in 1839 elected a doctor of medicine to hold the office of coroner—the first physician-coroner in the United States. Although such enlightened precepts were transmitted from the mother country to our eastern seaboard rapidly, their extension to the rest of the country was remarkably slow. Even at this writing only ten states of our fifty have statutes that make the degree Doctor of Medicine a prerequisite to holding the office of coroner. Since that day in 1839 in Philadelphia, which is one of outstanding importance in medicolegal history, repeated investigations have reported and described the weaknesses of our coroner's system and made recommendations for correction. Unfortunately, as is the case with so many investigations, good or bad, the reported context has had little influence on public officials, on legislators or on their constituency, the public.

Three states have taken action after receiving the recommendations of their respective study groups. In 1877 a medical examiner system was established in Massachusetts by a law which provided that medicolegal examinations of each county should be done by "able and discreet men, learned in the science of medicine." The act also stipulated that they be appointed for a period of seven years by the governor of the state and that their investigations were to be concerned with the "dead bodies of such persons only as are supposed to have come to their deaths by violence." An autopsy was to be performed by the medical examiner when "it was authorized in writing by the District Attorney, Mayor, or Selectman of the district." In 1915, the legislature of the State of New York established the office of Chief Medical Examiner in New York City. According to the act, he and his assistants had not only to be doctors of medicine, but trained pathologists as well. The chief medical examiner was to compete for his office in free and open examination, the successful candidate being appointed by the mayor for life. He, in turn, was to have the privilege of appointing his assistants. The constituency of Iowa, in 1959, after the state legislature eliminated the coroner's office there, instituted a statewide medical examiner system.

Even with this extraordinary example of progress in these instances, the office of coroner generally deteriorated elsewhere. In 1926, a survey was made by Raymond Moley into the coroner's system of the State of Missouri, a state that does not require the coroner to be a physician. (Missouri serves as an example only because of the specificity of the Moley investigation.) Moley found among the men holding the office of coroner in the State of Missouri music dealers, candy makers, farmers and a number of other persons of widely diversified talents and sometimes dubious occupations. Most commonly he found that the office of coroner was held by a mortician who sought the position because, as coroner, he often had privileged information, early contact with the families of deceased persons, and jurisdiction over the body in question. He had a place to keep it and, by virtue of possession, he had a competitive advantage over others in his business. Far from being an exception, the State of Missouri is typical of the majority of states. Moley found that the office of coroner was losing, or had lost, much of its dignity and influence. This was in part due to the lack of requirement that persons who might accede to the office must have special knowledge—this despite the extraordinary powers which the coroner might have. Conduct in office of many incumbents also at times degraded the reputation of the office. With such decline in public esteem it was often difficult to enlist good candidates for the office. There have been instances in which no candidate appeared for election unless the office was combined with that of sheriff, which carried more authority and the right to collect fees, or with that of public administrator, wherein the elected official had an opportunity to acquire accessory income by administering estates for a percentage.

Until recently, academic interest in medicolegal problems has been meager. In only specific areas have offices been given enough financial and moral support to attract well trained and competent candidates.

The American Medical Association in 1943 directed a special investigation into the procedure, administration and accomplishments of the current medicolegal systems, but neither their investigation nor the passing of 17 years since the Moley investigation produced much that was new. In 1944, when the report was published, it contained the conclusion that throughout most of our country legal medicine was used less effectively in the administration of justice than in any comparable country in the world.

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II. Functions of the Coroner

THE OFFICE OF CORONER was created by the California State Legislature in 1876.

Under Sections 10400 and 10425 of the State of California Public Health and Safety Code, together with various sections of the codes of the component counties of California, the coroner is directed to investigate and in his judgment hold an inquest after death in the following circumstances:

1. A person has been killed.
2. A person has committed suicide.
3. Death is the result of an accident.
4. An injury is a contributing cause of death.
5. Death has occurred without medical attention.
6. The attending physician has been unable to state the cause of death.
7. There is reasonable ground to suspect that death was directly or indirectly caused by the criminal act of another.
8. Continued absence of an attending physician.
9. The physician of record was in attendance less than 24 hours before death.
10. A person has died suddenly.
11. The circumstances of the death are unusual.
12. Death has occurred through the instrumentality of some other person.
13. Death has occurred under any suspicious circumstances.

In addition to these provisions, there are nonstatutory responsibilities which a coroner may have to assume. For example, if a husband and wife die in the same accident without evidence of which died first, the medical presumption is generally that the wife died first, she being assumed to be the weaker of the two. In similar circumstances many life insurance companies, in order to provide payment to the beneficiary without litigation, hold that the husband died first. On the other hand, considering the present-day tax structure, it would be preferable in certain cases to presume that the wife predeceased her husband, for had her death been subsequent to the husband's she would inherit from him. The children, if there were issue, would in turn [in California] inherit her community half interest from her, thus charging two inheritance taxes against the estate instead of one. In such instances the coroner may be requested to state the time of death as well as the cause.

Review of these statutes reveals a vague, continuous sequence of developments in the medicolegal field paralleling our social evolution. Historically, there have been several episodes of progress through the years, interspersed with eras of retrogression and disintegration of the coroner's office. The basic provisions of our Health and Safety Code come from the old English common laws. These are:

a. If a person has been killed or died as the result of an accident, the coroner is directed to go to the scene of the death and hold an inquest thereupon.

b. If a person has committed suicide the coroner is ordered to investigate the death and thereafter to confiscate the property and belongings of the person. (Suicide under the English code was regarded as a major criminal offense, there being at the time the code was formulated no background of psychiatric understanding and social compassion, such as prevails today.) With certain recent exceptions this is still the case.

The beginning of the industrial revolution is reflected in provisions 3 and 4 of the list above—"death is the result of an accident," and "injury has been a contributing cause of death." In the medieval days of the coroner's office, cases in which death was a result of accident or in which injury had been a contributing cause did not assume major economic proportions. Accidents were common in everyday life and the economic liabilities accrued only to the injured person and his family. With the advent of the industrial revolution, society began to recognize the employer's responsibility for an employee's injury and/or death occurring from an accident, if it was due to negligence of the employer, or unnecessary industrial hazard, or other cause associated with one's employment. The gradual development of industrial accident commissions, double indemnity clauses in life insurance policies for accidental

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death, health and accident insurance and compensation coverage gave accidental injury and death a new pecuniary importance in addition to its historically tragic imputations. Many new problems developed for the responsible public officials in determining whether a person had met death through circumstances wherein someone else had a legal liability and a financial responsibility. With the further refinement of compensation insurance laws, it became necessary for the coroner to determine whether an injury which was the result of an accident occurring at work might be a remote or a contributing cause of death, and as such be compensable. In the ensuing years, illnesses arising (sometimes most tenuously) from industrial injuries have become compensable under the laws of the commonwealth.

It seems probable that most coroners in the past have been capable, within certain limits, of determining how a person was killed. They could also in some cases determine the presence or absence of criminality. They became adept at inquest technique. At this point their responsibilities and their capacities were exhausted. The multifold responsibilities currently assumed by medicolegal authorities in adjudicating the relative contribution of industrial poisons, physical injuries, personal negligence, psychiatric and psychogenic factors, or medical malpractice to illness and death could not be assumed by the untrained and unassisted coroner. These problems are products of our increasingly complex social-economic system, and progressively demand better facilities and services.

Methods of medicolegal investigation and the development of medicolegal training programs lagged far behind their parents, law and medicine. These newly developing socio-medicolegal problems disclosed not only that the existing officials, personnel and equipment of the offices of legal medicine were deficient, but that the regulatory statutes as well were inadequate. The line of distinction between natural and accidental death, suicide and homicide, mayhem and murder, assault and rape, arson and pillage is at times so fine that only with clearly defined authority can the most astute and well-trained investigators with the best of facilities be adequately discerning. Where there is a possibility of remote or minor injury by obscure means being a contributing cause of death, the intricacies of the problem are compounded, often even beyond the capacity of the well staffed modern coroner's office.

Over the past two centuries so many of the miscellaneous responsibilities of the coroner were transferred to other agencies that the duties of the coroner diminished to the simple and fundamentally objective inquest. He had to arrive at his conclusions only by observations made at the scene of death without investigation of the associated circumstances, for the privileges of investigation had been transferred to the police department or the sheriff's office. In 1926, as it had become apparent that no coroner, no matter how experienced and talented, could be reasonably expected to reach accurate conclusions without having more information than could be obtained by looking at the body at the scene of death, the State Legislature restored the prerogative of investigation to the coroner's offices in California. Most coroners then found themselves inadequately prepared to conduct investigations, as they were without trained personnel, proper equipment, work areas or staff-training facilities, and also without money to expand their office capacities. In states where medical examiner systems existed or have become operative, the medical examiner was by law a better qualified official and had more financial support, but the original terms of appointment have directed most medical examiners to be concerned mainly with death of homicidal or suicidal nature. Even the authority of the medical examiner did not at first include investigations into the industrial accident field. Currently, coroners in California (and medical examiners elsewhere) have the authority and the facility for such investigation.

Development of the Present Health and Safety Code

It is apparent that although the original four provisions of the Health and Safety Code covered the fundamental requirements in cases of homicide, suicide, accidents and injury, they did not cover the other medicolegal needs of society. As medical knowledge grew, the untrained official, whether lay or professional, was unqualified to meet the growing medical responsibilities of his office. It became necessary to acquire the services of scientists and physicians who could solve the academic problems of the office. Provisions 5, 6, 8, and 9 in the list printed at the beginning of this article are all concerned with the acquisition of medical opinion to establish the cause of death to substantiate the coroner's opinion as found by investigation and inquest. In review, these provisions cover:

5. Death which occurs without medical attention.

6. Death where the attending physician has been unable to state the cause of death.

8. Death which occurs during the continued absence of an attending physician.

9. Death where a physician has been in attendance less than 24 hours beforehand.

Three of these provisions (5, 8 and 9) mainly protect the public from the maneuvering of those who seek to make murder or suicide appear to be

death from natural causes. Two (6 and 9) provide legal and scientific consultation in the case of unaccountable death and protect the physician or health officer from being forced into the position of having arbitrarily (and perhaps erroneously) to certify to the cause of death. In such circumstances both medicine and society are better served by an official investigation.

None of the sections so far discussed covers the problem of violations of the Medical Practice Act, nonprofessional instrumentation or criminal abortion, with all the social, medical and religious crosscurrents. Proviso number 7 authorizes the coroner to investigate obscure and intangible cases, including abortions, where he finds that "there are such circumstances as to afford a reasonable ground to suspect that the death was directly or indirectly caused by the criminal act of another." The coroner is protected by this article for he need have only a reasonable ground for suspicion. When deciding upon an investigation, he need at the inception have no specific facts or documentation, the death needing only to have occurred under suspicious circumstances and possibly by the criminal act of another either directly or indirectly. Considerable latitude in instituting and conducting investigations is implied by this rule.

Further authorization for the coroner to investigate became necessary because of the peculiar exigencies arising from drug addictions, untoward reactions to medication, collapse under anesthetics, chemical incompatibilities, allergic reactions, antibiotic sensitivities, organic and inorganic chemical poisonings, food intoxications, suffocation, carbon dioxide inhalation, industrial toxins, automobile accidents and ionizing radiation. Two provisions—"a person has died suddenly," and "the circumstances of death have been unusual"—give the coroner authority to investigate any such uncommon occurrences.

The mechanical age has had great impact upon our national health; and in many cases inexperience, negligence, carelessness, recklessness, alcoholism, incompetence and mechanical failure have been the instruments by which not only the principals and passengers, but also innocent bystanders and casual observers have been injured or killed by moving vehicles. Number 12, cases in which "death occurs through the instrumentality of some other person" covers all such circumstances. Cases of malpractice may also be legally investigated under this rule.

The reason for the inclusion of item 13, covering cases in which "death has occurred under any suspicious circumstances," is obscure but it obviously covers any situation not covered by the previous twelve directives, as well as any unforeseen new problems or situation which will arise in the strange new world of tomorrow. By this authority, a coroner may investigate any death that he decides is associated with any abnormal social or medical pattern or circumstances of behavior which may arouse his suspicion.

That such a motley, disorganized and overlapping group of sanctions, without sequence or continuity, should constitute the authority of a designated public official to investigate the medicolegal problems of a great commonwealth is a sad commentary upon the progress and evolution of statutory law in our generation. It is true that they provide the coroner with definite powers and provide him safeguards in the pursuit of his duty. It is also true that the public is provided with medicolegal services which are commensurate with the quality of the official's work. Practitioners of medicine are given academic assistance and at times the opportunity of confirming their medical conclusions by referring to a properly constituted office the confusing medical problems which arise. But they do not set standards, or behavior patterns of operation or minimal technical qualifications for employment or requirements for official election or appointment. Today, even in the best serviced areas, homicide, suicide, manslaughter and mayhem may occur unsuspected and undetected. Although the most dramatic and apparently still the most newsworthy of coroners' cases, these are no longer the prime circumstances of importance within the medicolegal pattern. Workmen's compensation laws, industrial accident commissions and compensation court awards have given the findings of the medicolegal offices a real and substantial pecuniary value. These findings also have far-reaching social values. For instance they may determine whether a widow must abandon her maternal status and go to work to support her family after the death of her husband, or whether by an industrial insurance award she may stay home to care for and educate her family. Verdicts can be instrumental in deciding whether children go to college or to day-labor, whether a mortgage is foreclosed on the family home, or whether a patient gets private medical care or hospitalization in a publicly supported institution. The apprehension of murder, the revelation of abortion, or the disclosure of charlatanism and malpractice are basically important, but they are currently less important economically than the accurate evaluation of the role of effort in inducing coronary thrombosis and heart failure, or the importance of silicosis, developed during employment, contributing to death from active pulmonary tuberculosis. The child, Industry, has outgrown the giant, Crime, in medicolegal importance within our modern civilization.

This obvious pyramiding of medicolegal responsibilities, both in scope and importance, has led to

general medical and legal confusion and disorganization, within which are alternating bright spots of progress and accomplishment. Education of the general public, the legal and medical profession, medical students, technicians, law enforcement officers and morticians is essential to the best future development of superior medicolegal service. Although meager, some courses are now being offered by various institutions for these purposes. Of first importance both to the public and the professions in this regard is some knowledge about death and of the immediate consequences. Who can sign a death certificate? Who can authorize an autopsy? Who may remove a deceased person from the place of death and when? Who may prepare a body for burial? Who may assume the responsibility for interment? Who are the legal heirs? These and many other items deserve subsequent discussion because they become important immediately upon the death of an individual anywhere in the towns, cities and counties of California, the United States of America, countries of the "civilized" world, and even to a more limited extent in less privileged areas.

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III. Death and Its Medical Imputations

SOMETIMES A PERSON is alone when he dies. More often, friends or relatives are present. In rare and fortunate instances the family physician is present at the time of death. In any case the physician who has been in attendance upon the patient in his last illness immediately becomes responsible for the signing of the death certificate within 36 hours, provided (1) he is duly licensed and qualified; (2) he has been in attendance upon the patient for a legal length of time; (3) he has adequate knowledge of the patient's illness. In the certificate he must record the legal details of personal identity of the patient, the time relationships of the illness and the death, the immediate cause of death and any accessory, contributing or miscellaneous diseases. This record may be completed at the place of death or elsewhere upon receipt of the blank certificate. After this certification the family or other responsible persons may release the body to a legally qualified and licensed person who has been employed to conduct the burial.

If for any valid reason the physician is unable to sign the death certificate, he must remand the case to the coroner by reporting the salient circumstances of the death to him or his deputies. This report may be given orally, by telephone if the physician wishes. Under the latter conditions it is unlawful for anyone but the coroner's representative to remove a dead body from the position or place of death to any other position or location, unless the body is inflammatory to the public view, such as in an open and exposed place, or if it constitutes a public hazard by its location, such as on a congested thoroughfare. Nonmedical personnel, such as ambulance attendants, public health department stewards, or nurses when called to the premises of a sick, comatose, moribund or apparently dead person may take whatever steps necessary for ascertaining the advisability of summoning medical treatment. They may also administer emergency first aid. Such persons may go through the established medical routine of determining whether or not the patient is dead. When it becomes apparent that emergency first aid or further medical attention will be futile or that the patient has died, neither the body of the deceased nor any of the adjacent surroundings may be further disturbed by anyone but persons with the coroner's legal authority.

No attendant or other person excepting the coroner's representative is entitled to search the body, clothing or premises of a dead person, nor may any person direct a member of the family to conduct such a search. It is illegal for anyone, including newspaper reporters, to seek pertinent information of the relatives before the death certificate is signed by the physician or authority has been assumed by the coroner. An exception obtains in the case of an ambulance crew that might remove a dead person or one who died in transit from the place of collapse or death to an emergency hospital. In these circumstances, the property and effects of the dead person are received by the admissions clerk of the institution and accounted for by the hospital authorities in the same manner as if the patient were alive.

If, after death, there are no members of the

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family present and the body is attended by either casual friends or incidental strangers, those in attendance should notify the family, the family physician or the coroner. They should then see that the premises are locked. All persons should be warned against entry. The police department may also be called so that an officer of the law may be present and on guard pending the arrival of members of the family, the family physician or a coroner's representative. In obvious criminal, accidental or suicidal deaths, both the coroner's office and the police department should be notified at once by anyone present. Upon notification, a member of the police must appear in person to conduct an official investigation. It is, however, improper and unlawful for a police officer to give or accept vocal orders for removal of the body of a deceased person but he may take such action upon receiving written orders from the coroner's office.

In coroner's cases, coroner's deputies may remove the body to any authorized place. Any citizen may be deputized by the coroner at his discretion and any place may be designated. It is unlawful, excepting in the most unusual circumstances, such as death occurring at sea or in remotely isolated and inaccessible areas, for any unlicensed person to act as an agent of interment. If such an emergency burial is unavoidable, the circumstances should be reported to the nearest legal authorities at the first opportunity.

The death certificate, after completion, is filed with the Bureau of Vital Statistics, where it is reviewed and finally tabulated. If the certification is unsatisfactory or inadequate, the Bureau of Vital Statistics may suspend the death certificate and report the case to the coroner for review. Morticians may also refuse to accept a death certificate, if in the progress of their work they find that the cause of death as certified is inaccurate. Or, if suspicious circumstances are encountered, they should immediately report their findings to the coroner's office.

Responsibility for the reporting of irregularities of a suspicious nature is not limited to the physician, the mortician and employees of the health department. Every citizen having knowledge of previous, accessory or subsequent suspicious circumstances associated with death is required by law to report the facts truthfully to the proper authorities. The coroner's office in accepting information must rely implicitly upon the honesty of the reporting persons. Section 148 of the California State Penal Code provides penalty for anyone giving false information and provides that such reports shall not be made except in bona fide coroner's cases. This does not include cases wherein a physician may wish to obtain an autopsy after permission has been refused by the family. Conversely, the code provides that information regarding authentic coroner's cases shall not be withheld. It further provides that in coroner's cases autopsy studies shall not be made by a physician or pathologist after obtaining autopsy permission from the family unless the permission of the coroner has also been obtained. Violation of this section of the Penal Code is an offense punishable by imprisonment up to five years and a $5,000 fine.

Although not illegal, it is improper and unwise for physicians to conclude the "dead and discharge" note in their records or in a hospital chart with the clause "cause of death unknown" when the progress reports made to the family have given ample evidence of adequate knowledge of the sequence of events leading to death. It is also inadvisable to include in the discharge or terminal notes of medical records the entry that death may have been due to a "possible injury," or "possible drug ingestion" or "possible transfusion reaction" or any other medical uncertainty in the hope of creating sufficient doubt in the minds of relatives either to persuade one of the family to sign an autopsy permit or to cause the coroner to order an autopsy when there is not sound reason to perform one. The coroner's office must accept a request for a preliminary investigation, but a provocation should not be used by house staff officers, hospital authorities, physicians, or members of the family to induce the coroner to authorize an autopsy study. The pathologist, acting independently or as an agent of an institution, has a special responsibility both in accepting a permit for an autopsy and during the investigation. Should the pathologist, in the review of the history submitted with the autopsy permit, decide that the case belongs in the coroner's jurisdiction, he should not proceed with his investigation but report the case to the coroner for clearance. When in the progress of an autopsy, he finds that the death may have been due to dubious circumstances, the autopsy should be arrested and the coroner's office consulted for procedural directions.

Excepting for the coroner's cases, the public administrator of the county has official jurisdiction of the body where there is no estate, no will, an estate with no will, or where there are neither relatives nor responsible friends. After notification in such cases he takes charge of the body and the property of the decedent, searches for the next of kin, arranges for burial as may be required by law and administers the disposition of the residual funds and personal effects. The state anatomical board in certain circumstances may assume authority and retain bodies for dissection.

In cases in which death is apparently due to natural causes, a death certificate is signed, the body is buried and then subsequent evidence reveals that there may have been other causes of death than

those recorded, the coroner has the authority of exhumation. Under Section 27491 of the Government Code, he may "for the purposes of such investigation, in his discretion take possession of and inspect the body of the decedent, which shall include the power to exhume such body" and order an autopsy examination. The cost of exhumation and the autopsy is borne by the county.

POLICE DEPARTMENTS

While police officers have a special responsibility associated with death, police officers are not authorized to pronounce a person dead. This responsibility lies with the stewards of emergency hospital services, private physicians or a coroner's representative. The presence of an acquaintance of the deceased or the locking of the house or room does not justify the police officer in leaving the place of death before the arrival of a responsible friend, relative or duly constituted official. The police officer has no authority or responsibility to establish personal identification, or to take charge of the property at the scene of death. He should not search the body, clothing or premises of the deceased. He may, with the consent of the coroner, take charge of the lethal weapon in a case of murder. He may not, however, take charge of suicide notes, wills or other documents, nor may he take or disturb any instruments or weapons with which a suicide was effected, these being solely in the stewardship of the coroner's office. Coroner's deputies themselves should not search a body or premises excepting in the presence of witnesses. Witnesses should be sought and asked to sign a list of the personal property of the deceased, whenever possible. At least one witness must be present, under any circumstances, before any public official may search a dead person or his premises.*

AUTHORITY TO SIGN AN AUTOPSY PERMIT

Until recently (1956) it was unlawful for a living person to grant permission for autopsy upon himself. Such bequests were unlawful because by existing statute a body after death, together with the rest of the estate, became the property of the heirs. A dead person had no property rights. Nor could an individual, under California law, will his body or any part of it to an institution for educational or experimental purposes. Then in January, 1956, recognizing the great benefits derived by society from the surgical transplanting of "dead" tissues to living patients, and for other enlightened reasons, the California State Legislature passed an act declaring it legal for an individual to permit an autopsy upon himself and to bequeath all or any part of his body to a qualified institution in order that it might acquire eyes, arteries, bone, cartilage, skin or other organic tissues for banking, research or educational or other academic purposes.

The legislation controlling autopsy permits has also been recently revised. Before the enactment of the new legislation, an autopsy permit had to be signed by the next of kin. The line of succession was spouse, father, mother, brothers and sisters in chronological sequence, then uncles, aunts and other relatives in the order of relationship. The law now permits any one responsible relative to authorize an autopsy. Where there are no relatives, a friend who will assume the expenses of burial may sign an autopsy permit. If the deceased is either intestate or indigent and has neither friends nor relatives, the public administrator of the county may permit an autopsy. In cases where there has been an accident which might be considered a contributory cause of death or where a claim has been made by the family upon an insurer or responsible persons for indemnification, an autopsy may be ordered by an official of the State Industrial Accident Commission. A duly elected or appointed judge may also issue a court order for a necropsy examination in such cases. The autopsy permit need not be a formal printed form. Any simple holographic statement on any kind of stationery is legal if it is signed by a qualified person in the presence of a witness who has also signed the document.

*All legal interpretation cited is general principle. There are many variations in local county and state health and safety codes.

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IV. Basic Qualifications of a Coroner or Medical Examiner

THROUGHOUT the United States legal qualifications for the county medicolegal officer as currently established by statute are either meager or nonexistent. In one state (Arizona) there is no medicolegal practice act. In another (New Mexico) there is no coroner, inquest being held by a justice of the peace. In 37 of the United States anyone may be coroner. In four states coroners are justices of the peace; in three the coroner may be anyone who acts on the order of either the court or the prosecuting attorney. In nine states the medicolegal investigator must be a doctor of medicine. By local option in some counties among the United States the coroner has to be a doctor of medicine although there is no statewide requirement. In three states the medicolegal officer is a medical examiner.

Because of the diverse responsibilities of administration, investigation and inquest which are put upon him, in most localities, the coroner must manage his office, be an officer of inquiry with both medical and detective abilities and an advocate who is able to hold court where he may hear and adjudicate evidence. He also often has to be a politician. Such is the scope of knowledge and action required in medicolegal work that the coroner, to conduct his office properly, needs not only broad knowledge and experience but must have expert consultation, advice and technical assistance in diverse fields. It is not possible for one man today to encompass the multifold medical, legal and scientific areas. The basic qualifications obviously vary with the locality. Large urban centers have problems and demands that are very different, although no more difficult, from those encountered in smaller municipalities and in rural areas. In larger centers of population pressure for improvement has been heaviest and several different approaches for solution of the problem have been made.

San Francisco

In 1928 the freeholders of the City and County of San Francisco were directed to prepare a new charter under which the city might operate. One of the radical changes they instituted was the removal of the coroner from elective office. They directed that a licensed physician-surgeon be chosen by appointment to fill the office. The coroner incumbent at the time of this change in requirements was a licensed physician under the laws of the State of California. Because of his long experience he was blanketed in as a civil service employee with a civil service tenure for life. It was further stipulated in the charter that when he vacated the office, coroners thereafter would be chosen by a civil service examination with credit being given for experience, previous training, education, and grades received in an open examination. Previous to this time the term "autopsy-surgeon" had been made an official designation by the legislature of the State of California for physicians performing autopsy.

Under the terms of the new charter, the coroner was permitted to appoint autopsy surgeons, pathologists and chemists to his office staff. Money was appropriated for such services and these funds were included in the city budget. The newly appointed coroner, with a meager but somewhat increased budget, employed an autopsy surgeon and acquired the services of a pathologist who made gross and microscopic examination of material submitted by the autopsy surgeon for corroborative diagnosis.

This novel approach to a city and county's medicolegal problems produced improvements, although it established a system which was radically different from that of medical examiner. The coroner was an independent official accountable neither to the police department nor the district attorney's office. He had his own investigating staff of deputy coroners who inquired into the circumstances of death. The medical staff established the cause of death. He acted as the administrator and conducted the inquests. With this change in organization and improvement of facilities, the percentage of cases accepted and investigated by the coroner increased and the autopsy rate soon approximated 100 per cent. This figure has been maintained for 30 years.

Although the changes were radical, the coroner did not relinquish any of his authority or his existing privilege of inquest and investigation. He also retained the coroner's jury, which provides a system of balances and checks for the coroner, his deputies, the autopsy surgeon, the pathologist and the legal representatives of involved persons. Although different in name and with certain sociopolitical differences, the scientific organization, the operation

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and the results of such a system are very similar to those of a medical examiner's system operating in a similar area. After the passage of years and with the resignation or retirement of many of the original members of the office, a new medical staff was recruited from the faculties of the pathology departments of the Stanford and University of California medical schools. Currently the pathologist is a professor of pathology in the University of California Medical School and the autopsy surgeons are university-trained and board-qualified specialists in their field.

Following this example in San Francisco, other counties in California have chosen physicians as their medicolegal officials either by appointment or by competitive examination. In California today there are nine counties in which the medicolegal official is a licensed doctor of medicine.

Even in areas where the coroner is a physician and now has an able staff of consultants and assistants, the present stature of the medicolegal service is the result of a gradual expansion in response to evolutionary demands and the growing availability of desirable personnel. Other counties have made progress in other ways by contracting for special services and soliciting outside help from other counties, state agencies and private laboratories.

Under our legal system of establishing statutes by precedent which later become law by acceptance, no clear-cut code exists which establishes basic jurisdiction of the office of coroner. There are, however, five general categories of responsibility which may be accepted. These are:

1. Cases of homicide arising from criminality, which includes first and second degree murder, manslaughter, arson, rape, mayhem, abortion, culpable negligence, and death in suspicious circumstances. (The suspicion in such cases is usually a suspicion of criminality.)
2. Cases of death from suicide.
3. Cases where there is a financial association and relevance such as in industrial accidents, life insurance claims, or other liabilities wherein death has a monetary value.
4. Cases comprising deaths due to the products of civilization, such as traffic accidents, smog fumes and other vapors, carbon monoxide and dioxide, industrial solvents, food poisoning, pesticides and weed-killers, serums, vaccines and "wonder drugs." This latter group is growing in importance as medicine develops a fuller knowledge of disease processes and, through current drug therapies, produces some new diseases while eradicating or suppressing some old ones.
5. Cases of deaths which, although apparently of natural causes, are sudden and about which there is inadequate clinical data.

Neither the legal code of authority nor our existing medicolegal facilities are adequate to meet this expanding demand. The need for legal revision of the public health and safety codes in order to establish a group of basic principles for the effective operation of a good medicolegal investigative system has become obvious. Repeated attempts have been made to reorganize effectively and recodify on a county, state-wide and national basis. Interesting and productive among these efforts was the model postmortem examination act which was drafted by the National Conference of Commissioners of Uniform State Laws in Chicago in 1954. The California Assembly Judiciary Subcommittee on Police Administration, in September, 1959, issued a joint report on medicolegal investigation in which certain farsighted recommendations were made. Another subcommittee, the California Assembly Interim Committee on Public Health, had previously studied the outstanding differences between the medical examiner system and the coroner system and subsequently suggested an elaborate revision of laws pertaining to coroners. These reports have been thorough and thoughtful and the recommendations have been valuable. Meanwhile, the evolutionary processes have continued to contribute subtle changes in all existing systems and many of the deficiencies which were noted in old reports have been corrected. Many services previously noted in these surveys as needed but not available have since been provided in some areas due to public demand and social pressure.

There have been repeated local, state-wide and national attempts to legislate the coroner's office out of existence and substitute in its stead the office of medical examiner. These efforts are generated by persons who believe that changing the names of officials or their offices would improve their performance. The appellation is unimportant. The fundamentals of successful operation of the office remain the same in any circumstances. Certainly a legal code of basic principles and elementary requirements for a good state-wide medical legal investigating system should be established; but with the complexities of living and dying multiplying as they are today, a schema of professional and technical training should be instituted and trainees should be available for employment before a new code establishes higher standards of operation. Currently, not enough trained personnel is available to meet the staffing requirements of any state-wide reorganization.

The legal basis for the coroner's system in California rests upon our dedication to state and county home rule. In four charter counties—Santa Clara, San Mateo, Los Angeles and Sacramento—and in the consolidated City and County of San Francisco,

the coroner is appointed after civil service examination. The entire staff in Los Angeles County has been under civil service since 1913. In 53 counties, however, a coroner is elected and in many counties the officer is compensated on a fee basis. The state law provides an optional consolidation of the office of coroner with certain other county offices, most commonly those of public administrator and sheriff. Fifty-two counties have exercised this option: 40 of California's counties have combined the coroner's office with that of public administrator, 11 combined it with sheriff, and one combined it with the office of district attorney.

In each county there are varying qualifications specified for one who may be appointed or elected as coroner. The rate and mode of compensation is determined locally, but the coroner is charged with his duties under the state law. Consequently he is not required to apply for a local court order to authorize an investigation or to seek the permission of other law enforcement officials to obtain possession of the body of a decedent, nor is he required to call witnesses. He has jurisdiction and the law directs him to cause an investigation to be made.

Basically, the coroner in California is an administrator with the authority to obtain the services of such specialists as he may need to carry out the laws governing and stipulating his duties. Although a county officer, he is by no means confined to the borders of his county in obtaining such special services as he may find necessary. He may arrange with laboratories and specialists in other counties or cities to make analyses and, if necessary, he may go outside the confines of the state to obtain consultation. The fees due for any such work become a charge on the county involved and are payable by the county board of supervisors.

It is estimated that California coroners order autopsies in approximately 50 per cent of the cases that come under their jurisdiction. This rate, of course, varies greatly between counties. A few report that they conduct autopsies on all referred cases; the larger counties, having full-time autopsy surgeons on their staffs, have more facility and economy in this regard than smaller counties. In rural areas there is generally a panel of doctors who rotate on call. Some counties have standing arrangements with specialists on the staffs of county hospitals or other local institutions to provide assistance and consultation. An increasing number of counties now have laboratory facilities and a pathologist or pathologists on the county payroll. Several counties have made pathological and laboratory facilities available through the county hospital and the coroner arranges for such work as he needs it. Many of the smaller counties that do not have such equipment and personnel available within the county send their material to outside laboratories as a regular routine. The University of California Medical School and Stanford University School of Medicine give some assistance. The State Crime Laboratory in Sacramento provides service for many counties. Some counties contract with private laboratories and one county, Solano, reports that it receives expert assistance from the medical department of the Navy station located within its confines.

Currently, the coroners of most counties avail themselves of expert help and consultation in one or several phases of their work. The amount of work that is referred to the coroner's office is often out of proportion to the size or population of the county. Alpine County has about 400 persons and almost no coroner's cases, Del Norte County has slightly over 18,000 population and between 35 and 40 cases per year, while Los Angeles County with some 6,000,000 people has coroner's cases running well into the thousands. San Francisco with a far lower population (700,000) has a much higher percentage of cases referred to the coroner's office, averaging between 2,500 and 3,000 cases per annum, in nearly all of which autopsy is done. There is a growing trend within the state for the larger, more affluent and better equipped counties to assist the smaller counties, not only by providing consultation on low fee or fee-free basis, but also by helping them to raise their standards in many ways.

The coroners of the state are organized and through their organization have not only improved the quality of the work done by their offices but have been able to influence state legislation in their behalf. The California Medical Association, with its well developed organization, has also been actively interested in the medical-legal problem and has repeatedly adopted resolutions for the enactment of a uniform and efficient state-wide system. It was partially through the efforts of the California Medical Association that the 1953 California State Legislature created a fact-finding interim committee. In that year there were 110,023 deaths in the State of California, of which 84,162 were certified by physicians and 25,861 by coroners. Some 33,000 autopsies were performed, 19,000 were performed on a private basis by permit and 14,000 by coroner's offices. Of the 14,000 autopsies by coroners, about half were done in Los Angeles, Alameda and San Francisco counties. In Alameda and San Francisco counties autopsy was done in almost all coroner's cases, while in Los Angeles County it was done in about 40 per cent of such cases.

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Part V. Coroner or Medical Examiner?

PERIODICALLY IN THE PAST contention has arisen regarding the relative virtues of the medical examiner system and the coroner system. Champions of both systems have been employed to make numerous studies and reports in California. There have been both wide variance and close agreement among the several investigators, but basically they all recognize that the real determining factor in gauging the value of a medicolegal office is the quality of work that it does. The terms *coroner's office* and *coroner system* have carried a stigma in many areas in the past because of the incompetence in some of the jurisdictions as well as because of the adverse historical implications. On the other hand, a new name for incompetence does not change the quality of work nor does a name reduce the standards of a well operated office. It might be that a new title for an official engaged in medicolegal work in the State of California would be desirable, but such a change will require legislative action far out of proportion to any immediate benefits which might be derived from such a change. No title will insure the medicolegal investigating officer's competence, capacity or incorruptibility.

In the final analysis, the adequacy of a medicolegal system depends upon the training of its personnel. In the past, where personnel and financial support were available, offices with meager beginnings have acquired staffs of well trained technicians, secretaries, investigators and consultants who have done good work under a well qualified and well compensated administrator.

In considering the extent to which a system should be developed in any specific locality, one must take into consideration the geographic features, distribution of population, local finances, other economic and social factors, potentialities for growth, office and housing space, load figures and the local philosophy of the area.

If one were to evolve a statewide system for medicolegal investigation, some cooperative balance would have to be established between the urban centers with enough funds to staff a competent office and suburban areas that had no money or personnel or laboratory facilities. In fourteen counties of California the duties of coroner and sheriff are combined under the charge of one person. In many counties the duties of coroner and public administrator are combined. There are unique factors that justify the combinations in certain instances, but there are areas in the State of California that now have combinations of this sort although they would be better served by separate offices, with each division staffed by a specialist in the field.

Obviously, it is essential at all times that the medicolegal officer of the county work closely with the law enforcement officers and with the district attorney's office, but where the volume of work to be done warrants the expense, separate and individually integrated offices offer the best potential services. Where volume and funds permit, the medicolegal office seems to be best served by a physician, in spite of the judicial and legal requirements of the office. It seems more practical for a physician to acquire the necessary legal knowledge to conduct the legal routines of the coroner than for an advocate or jurist to acquire the medical knowledge essential for medicolegal investigation. The background of experience needed for the best direction of a medicolegal office staff is also overwhelmingly weighted on the medical side.

Some supporters of the coroner-sheriff combination have suggested that the same law enforcement agency should be concerned and charged with not only the responsibility of an initial investigation into the cause of death but also with the detection, apprehension and detention of suspected persons. Others maintain that the coroner or medicolegal officer of the county should only determine the cause of death and should have no further investigative responsibility. Such limitation is, of course, archaic and is not currently acceptable because of the now heavy and still expanding responsibilities of the modern medicolegal investigating system. A middle course between these two extremes offers the most promise.

The Pathologist

No one likes death, not even the people who choose it voluntarily. People commit suicide only because they like death better than the life they have. Death is also generally messy; and dead people, whether embalmed or not, soon become physi-

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cally repulsive. Yet the pathologist, when he is engaged in medicolegal investigation, must examine dead bodies by the necropsy technique; and unattractive and unpleasant though the procedure may be, there is no discipline in which accuracy is more essential or honesty, knowledge and experience at a higher value. The benefits of the necropsy and medicolegal studies are great and accrue not only to science but to society as well. The academic contributions derived from an autopsy study are inherited by posterity, for the final focus of such scientific investigations is on the welfare and future of mankind. Observations at autopsy are constantly being translated into new safety and health programs that become a part of man's progress in the art of living, contributing to his future comfort, security and happiness. Knowledge that this is so helps the medicolegal investigator to overcome some of the repulsive aspects of his work.

Coroners of the 19th and early 20th centuries had little stimulation to make contributions of this order. Neither the statutes of the time nor the attitude of society were such as to whet a scientific interest in the work or to encourage academic research in this field. Coroners were in fact prohibited from such activities by law. It is understandable in the circumstances that the office of coroner deteriorated almost to nullity. Pure scientists, be they social scientists or medical scientists, are unique and peculiar in their attitude. Intellectual curiosity and academic interest coupled with a social conscience establish a part of the formula for their motivation. To function happily and effectively, however, investigators must have legal authority, source material, financial support and a place to work. All these facilities have, at various times, been denied the medicolegal scholar.

With singular exceptions this situation still prevails, but progress is being made. While many of the reports of investigations of our medicolegal system have been unduly critical or prejudiced, they have without exception embraced the principle of improvement of the existing system or a change of the existing system to one with more promise. Better laws, better personnel and better financial support have been routinely mentioned by all. On the other hand, legislators and officials have frequently been indolent and disinterested when confronted with their constituents' medicolegal necessities. Educational institutions, with rare exceptions, have neither established departments of legal medicine nor offered planned courses to matriculate students in the field. Financial support from public sources continues to be meager; bequests are virtually unknown because no individual, or single segment of society, can derive much personal profit from either the support of a single research project or a comprehensive group program. Yet medicolegal investigation, especially where there is uniformity and competence, profits everyone. The financial responsibility assumed by the medicolegal investigator and the emoluments which hinge upon his findings have become matters of imposing magnitude. Many millions of dollars' worth of insurance policies, indemnities and industrial awards are distributed on the basis of medicolegal studies, but the value of medicolegal findings in criminal cases where either the public safety or the personal freedom of individuals is involved may be even greater. Today, even the best medicolegal consultation available is not good enough to provide all the accurate, impartial scientific work the public needs. Time, money, public cooperation and research must be regularly contributed and wisely used in order to assure each citizen his rights, privileges and safeguards.

RECOMMENDATIONS

In condensing the conclusions, opinions, and recommendations of the committees who have studied the medicolegal problem, the following recommendations predominate:

1. That properly accredited medical societies and legal societies be requested by the State Legislature to establish standards of qualification for personnel engaged in medicolegal investigation. These recommendations should include not only qualifications, but salary scales.
2. That these same agencies be requested by separate or by joint effort of their memberships to establish the responsibility of medicolegal officers within the context of current statutes, and, if necessary, to recommend legislation revising the scope and status of responsible medicolegal officers.
3. That medical schools and major educational centers be requested to intensify and augment training programs in legal medicine for medical students and for postgraduate students as well, and that continuing education for practicing physicians be provided to further acquaint them in newer methods and enlarged scope of forensic pathology. It is believed that an adequate panel of experts may be developed by such procedures for service in respective areas of medical practice.
4. That colleges and medical schools, upon their students' completion of a given curriculum, make available a list of students who are available for employment in medicolegal offices throughout the state.
5. That the utilization of qualified personnel be encouraged by postgraduate university extension and other miscellaneous courses offered to in-

cumbent sheriffs, coroners, public administrators, and other interested groups within the State of California to provide refresher courses and to introduce new techniques.

6. That provision be made temporarily for adequately trained personnel to be available for consultation in rural areas where facilities currently do not exist and where minimum budgets preclude the full or part time employment of specialists in the respective fields.

7. That the local option of rural communities be maintained and that the principle of county or home rule continue to be recognized. Within such areas, however, it is suggested that a well balanced and comprehensive campaign of public education be instituted for the dissemination of information regarding the legal background, the social necessities and the proper functions of an office of medicolegal investigation.

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