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North Carolina's Archaic Coroner System

One of the most ancient of the common law offices to be transplanted to America from England was that of coroner.¹ As the office exists in North Carolina today there have been few changes in its functions since its introduction in spite of the fact that it has become antiquated and outmoded. Some American jurisdictions, having found themselves in a similar situation, and recognizing the inefficiency and the attendant dangers therein, have abolished the office of coroner and have replaced it with that of medical examiner. A brief survey of our present system as compared with the medical examiner system will, it is felt, reveal the desirability of making the change in North Carolina.

ORIGIN AND DEVELOPMENT

The name coroner is derived from the Latin word "a corona," which being liberally interpreted means "for the crown," thus readily implying the early purposes of the office.² Its origin is usually traced to an ordinance of 1194,³ but the office as we know it today came into being in 1275 when the Statute of 4 Edward I was enacted.⁴ By this statute the coroner's duties were well defined and it was recognized that he had power to inquire into the death of any person, *super visum corporis*; to investigate treasure trove, deodans, and wrecks of the sea; to pronounce judgment of outlawries; and to act for the sheriff when there was just exception taken to that officer.⁵

The first law concerning coroners to be passed in the Carolina colony was in 1715 when the General Assembly declared the Statute of 4 Edward I to be in effect within the colony.⁶ Then in 1776 the office was made a constitutional one⁷ and in 1792 the provisions of the Statute of 4 Edward I were again declared to be the law of North Carolina.⁸ The North Carolina Constitution of 1868 provided for the office as it exists, with statutory ramifications, today.⁹ The specific provisions of our present statutory expression will be discussed on the following pages, but let it be pointed out here that other than to remove treasure trove from the coroner's jurisdiction,¹⁰ and to transfer outlawry to the justice of the peace,¹¹ the functions of the office have changed but little since 1275.

¹ 18 C. J. S. 288, §2.

² 1 Co. INST. 30.

³ 1 POLLOCK AND MAITLAND, HIST. ENG. LAW 534 (2nd ed.).

⁴ 2 BACON ABR. 425.

⁵ 4 Co. INST. 271.

⁶ Laws of 1715, c. XI.

⁷ N. C. CONST. (1776) §38.

⁸ MARTIN'S COLLECTED STATUTES (1792) c. 49, p. 13.

⁹ N. C. CONST. ART. IV, §24.

¹⁰ See N. C. GEN. STAT. (1943) c. 82, giving authority over wrecks of the sea to the commissioner of wrecks.

¹¹ N. C. GEN. STAT. (1943) §15-48.

ELECTION, TERM OF OFFICE, QUALIFICATION

The coroner is elected every four years and serves until a successor is elected and qualified.¹² He may succeed himself. Vacancies in the office are filled by the board of county commissioners and the person so appointed, upon qualification, holds office until his successor is elected and qualified.¹³ He is a county official whose jurisdiction is limited to the boundaries of the county in which he is elected,¹⁴ and he may be required at any time by the county commissioners of that county to give a report, under oath, on any matters connected with his duties.¹⁵

The coroner is not required to demonstrate any special qualifications for election to office. There is no limitation regarding color, sex, or occupation of candidates for the office. It is only required that he be a voter and not fall within the disqualifications prescribed by the Constitution.¹⁶

Before entering on the duties of the office, the coroner must take an oath to support the Constitution of the United States,¹⁷ the Constitution and laws of North Carolina,¹⁸ and to demean himself faithfully to the duties of his office.¹⁹ Should the coroner fail to take the oaths prescribed he is subject to a penalty of five hundred dollars and may be rejected from office by proper proceedings for that purpose.²⁰

In North Carolina, as in all other American jurisdictions, the common law property qualification for holding office is now unknown. The public, however, is protected by the requirement that the coroner-elect file a bond for the faithful performance of his duties.²¹ The statute requires that the coroner give a bond, with surety, in the sum of two thousand dollars payable to the state and approved by the board of county commissioners.²² This statute, however, is considered directive rather than mandatory, and the failure of a coroner to file a bond does

¹² N. C. GEN. STAT. (1943) §152-1.

¹³ N. C. GEN. STAT. (1943) §§152-1, 153-9(12).

¹⁴ N. C. CONST. ART. IV, §24; N. C. GEN. STAT. (1943) §152-1.

¹⁵ N. C. GEN. STAT. (1943) §153-9(10).

¹⁶ See N. C. CONST. ART. VI, §§7 and 8; and ART. XIV, §2. The constitution disqualifies from holding office all persons who deny the being of almighty God; all who have been convicted or have confessed their guilt under indictment of treason or felony, unless their citizenship has been restored; and all who have participated in a duel or a challenge thereto.

¹⁷ See N. C. GEN. STAT. (1943) §11-6, as to form of oath to support the Constitution of the United States.

¹⁸ See N. C. GEN. STAT. (1943) §11-7, as to form of oath to support the Constitution of North Carolina.

¹⁹ N. C. CONST. ART. VI; N. C. GEN. STAT. (1943) §152-2. See N. C. GEN. STAT. (1943) §11-11 as to form of oath to faithfully execute duties of office.

²⁰ N. C. GEN. STAT. (1943) §128-5. However, it has been held that the taking of the oath of office is not an indispensable criterion, for the office may exist without it. See *State v. Stanley*, 66 N. C. 60 (1872); *State v. Patrick*, 124 N. C. 651, 33 S. E. 151 (1899).

²¹ N. C. GEN. STAT. (1943) §152-3.

²² For local modification in Yancy County reducing the required bond to 500 dollars see *Session Laws of N. C. 1945, c. 271*.

not impair the validity of his official act as *de facto* coroner, in reference at least to third persons.²³ It is also provided that if the coroner presumes to discharge any duty of his office before executing the required bond, he is liable to a forfeiture of five hundred dollars, to the use of the state, for each attempt so to exercise his office.²⁴ It is required that the bond be approved, certified, registered, and filed as are sheriffs' bonds.²⁵ Any person injured by the neglect, misconduct, or misbehavior in office of the coroner may bring suit against him and his sureties upon his bond without any assignment thereof; and the coroner and his sureties are liable to the person injured for all acts done by virtue of, or under color of his office.²⁶

A special coroner is an officer of comparatively recent origin, apparently being unknown to the common law. In North Carolina it is now provided by statute that the clerks of the superior court have certain emergency appointive power whenever there is a temporary or permanent vacancy in the office of coroner.²⁷ This emergency appointive power may be exercised only when the coroner is absent from the county, or is for any reason unable to hold an inquest when necessary, or when a vacancy in the office of coroner has not been filled by action of the county commissioners, and, it is made to appear to the clerk that a deceased person whose body has been found within the county probably came to his death by criminal act or default of some person. Whenever the clerk appoints a special coroner under any of the aforescribed conditions the appointee is merely required to be a "suitable person,"²⁸ but he is vested with all the powers and duties conferred upon the regular coroner in respect to holding inquests over dead bodies, and is subject to the penalties and liabilities imposed upon the regular coroner in that respect.²⁹

POWERS AND DUTIES

The coroner's office is partly ministerial,³⁰ and partly judicial in character.³¹ His principal duty is to make an investigation into every "sudden or unnatural death" occurring within the county.³² It is specifically provided by statute that whenever it appears that any deceased person came to his death by the criminal act or default of some person,

²³ *Mabry v. Turrentine*, 30 N. C. 201 (1847).

²⁴ N. C. GEN. STAT. (1943) §109-2.

²⁵ N. C. GEN. STAT. (1943) §152-4; see N. C. GEN. STAT. (1943) §153-9 (11) as to procedure for approving bonds of county officers.

²⁶ N. C. GEN. STAT. (1943) §109-34; *McRae v. Evans*, 13 N. C. 383 (1830).

²⁷ N. C. GEN. STAT. (1943) §§152-1, 153-9(12).

²⁸ *Ibid.*

²⁹ N. C. GEN. STAT. (1943) §152-6.

³⁰ *Yeargin v. Siler*, 83 N. C. 348 (1880).

³¹ *State v. Knight*, 84 N. C. 790 (1881).

³² *Ibid.* The court cited as its precedent the ancient English case of *Res. v. Ferrand*, 3 B & A 260.

the coroner must go to the body and make an investigation as to: (1) when and how the deceased came to his death; (2) the name of the deceased; and (3) all the material circumstances attending the death.³³ In this respect it is a curious fact to notice that, although the statute requires the coroner to make an investigation whenever it *appears* that there has been a death by criminal act or default, there is only one³⁴ specific directive in the statutes requiring any individual, public or private, or any organization, to notify the coroner of that death. This lack of requirement of notification coupled with the fact that there is no restriction in North Carolina on removing dead bodies³⁵ is obviously a serious handicap to the efficient execution of the coroner's most important function.

If, upon making his personal investigation, the coroner is not satisfied that death resulted from natural causes, or that no person is blamable in any respect in connection with the death, he may call a jury and proceed to hold an inquest.³⁶ He is required to hold an inquest, regardless of his personal investigation, if an affidavit is filed with him indicating blame in connection with the death of the deceased.³⁷ The jury for the inquest must be composed "of six good and lawful men, freeholders, who are otherwise qualified to act as jurors, who shall not be related to the deceased by blood or marriage, nor to any person suspected of guilt in connection with such death."³⁸ The jurors are summoned by the sheriff,³⁹ and are sworn in the presence of the body.⁴⁰ After the oath has been given, and the jury has had a view of the body, the hearing may be adjourned to other times and places and the body of the deceased need not be present at such further hearing.⁴¹ It is within the power of the coroner,⁴² or of any juror,⁴³ whenever he deems it necessary to the better investigation of the cause or manner of death, to summon a physician or surgeon to make whatever examination as appears proper. The coroner must summon a physician even though he does not deem it necessary if requested to do so by the solicitor of his district, or by any member of the family of the deceased, or by counsel for the accused.⁴⁴ In any event, when the coroner is called

³³ N. C. GEN. STAT. (1943) §152-7(1).

³⁴ N. C. GEN. STAT. (1943) §130-80 requires the county registrar of statistics to refer to the coroner notice of any death which has occurred without medical attention and which he has reason to believe was due to unlawful act or neglect.

³⁵ OP. ATTY. GEN. OF N. C. (March 1946).

³⁶ N. C. GEN. STAT. (1943) §152-7(1).

³⁷ *Ibid.*

³⁸ N. C. GEN. STAT. (1943) §152-7(2).

³⁹ N. C. GEN. STAT. (1943) §152-11.

⁴⁰ State v. Knight, 84 N. C. 790 (1881).

⁴¹ N. C. GEN. STAT. (1943) §152-8(9).

⁴² N. C. GEN. STAT. (1943) §§152-5, 152-7(6); Gurganious v. Simpson, 213 N. C. 613, 197 S. E. 163 (1938).

⁴³ N. C. GEN. STAT. (1943) §152-5.

⁴⁴ N. C. GEN. STAT. (1943) §152-7(6).

on to summon a physician, he need not do so if he is a physician or surgeon himself, but may make the examination personally.⁴⁵

The right to order an autopsy is an important incident to the coroner's duty of holding an inquest⁴⁶ and may be exercised by him whenever either he or a majority of the coroner's jury deem it necessary to aid them in discovering the cause of death.⁴⁷ Although it is a general rule that the autopsy of a dead body without the consent of those entitled to its custody is a tort, the rule is inapplicable to the coroner and his inquest.⁴⁸ However, the right to order an autopsy is subject to certain limitations and the North Carolina statute has been interpreted as not authorizing the coroner to order an autopsy where there is no suspicion of foul play.⁴⁹ He becomes civilly liable when he does so.⁵⁰

When an inquest is held, if it appears that any person is guilty of any crime in connection with the death, the coroner must try to ascertain who was guilty, either as principal or accessory, as well as the cause and manner of the death,⁵¹ and has the power to have summoned any persons necessary to complete the inquiry,⁵² as well as to issue a warrant for all culpable persons.⁵³ The warrant is served by the sheriff or other lawful officer of the county in which the dead body is found.⁵⁴ If it becomes necessary to arrest persons in another county, the coroner of the county in which the body was found may issue his process, under seal, to the sheriff or other lawful officer of the other county, for service.⁵⁵ When the accused has been brought before the coroner the inquiry proceeds as in the case of preliminary hearings before justices of the peace.⁵⁶ If it appears to the coroner and the jury that the accused is probably guilty of a capital crime he is committed to jail.⁵⁷ If it appears that he is guilty of a lesser crime the coroner may fix his bail.⁵⁸ All persons found probably guilty in such a hearing, and who are denied bail by the coroner, are delivered to the keeper of the common jail by the sheriff or other lawful officer acting at the inquest.⁵⁹

This hearing by the coroner and his jury is held to be in lieu of

⁴⁵ *Ibid.*

⁴⁶ See 18 C. J. S. 297.

⁴⁷ N. C. GEN. STAT. (1943) §90-217.

⁴⁸ WEINMAN, LAW OF CORONERS AND MEDICAL EXAMINERS (Bull. Nat. Research Council, No. 83, 1931) 111.

⁴⁹ *Gurganious v. Simpson*, 213 N. C. 613, 197 S. E. 163 (1938).

⁵⁰ *Id.* at 616, 197 S. E. at 164.

⁵¹ N. C. GEN. STAT. (1943) §152-7(3).

⁵² N. C. GEN. STAT. (1943) §152-7(2).

⁵³ N. C. GEN. STAT. (1943) §152-7(4).

⁵⁴ N. C. GEN. STAT. (1943) §152-11.

⁵⁵ *Ibid.*

⁵⁶ See note 53 *supra*.

⁵⁷ See N. C. GEN. STAT. (1943) §§15-125 through 15-127 for order of commitment.

⁵⁸ See note 53 *supra*.

⁵⁹ *Ibid.*

any other preliminary hearing and the case is immediately docketed by the clerk of the superior court.⁶⁰ The accused, however, is not denied the right of habeas corpus.⁶¹ The coroner has power to require all material witnesses, who are not themselves culpable, to enter into recognizances, with sufficient surety, to appear at the next term of the superior court and give evidence; and he may commit to jail such witnesses who refuse to recognize as directed.⁶²

Immediately upon information of a death within his county under such circumstances as may in his own opinion necessitate an investigation, the coroner is required to notify the solicitor of his district and to make such additional investigation as he may be directed to do by the solicitor,⁶³ and to permit the solicitor or any one designated by the latter to be present at the inquest to examine and cross-examine the witnesses.⁶⁴ The family of the deceased and the accused person may also have counsel present who may examine and cross-examine the witnesses.⁶⁵ However, neither the solicitor, counsel for the accused, nor counsel for the family of the deceased may argue the case to the coroner's jury.⁶⁶ The coroner may, within his discretion, exclude the public from the hearing.⁶⁷

The statute directs the coroner to reduce to writing all the testimony and to have each witness sign his own testimony; the coroner then attests it with his seal.⁶⁸ If the solicitor so directs, the testimony must be taken stenographically.⁶⁹ Here again the witnesses are required to sign their testimony and the coroner attests their signature with his seal.⁷⁰ However, in practice these directions are seldom carried out.^{70a}

As a general rule the proceedings before the coroner are not admissible evidence on a trial for homicide in North Carolina.⁷¹ However, it has been indicated by a dictum of the North Carolina Supreme Court that the examination of a witness taken at a coroner's inquest would be admissible evidence if there was proof at the trial that the witness had died since the inquest but prior to the trial.⁷² This seems to indi-

⁶⁰ N. C. GEN. STAT. (1943) §152-10. This is but a statutory restatement of the common law. See CLARK, CRIMINAL PROCEDURE 88 (2nd ed. 1918).

⁶¹ N. C. GEN. STAT. (1943) §152-10.

⁶² N. C. GEN. STAT. (1943) §152-7(5).

⁶³ N. C. GEN. STAT. (1943) §152-7(7).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ OP. ATTY. GEN. OF N. C. (May 1935).

⁶⁷ OP. ATTY. GEN. OF N. C. (September 1932).

⁶⁸ N. C. GEN. STAT. (1943) §152-7(10).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

^{70a} See note 92 *infra*.

⁷¹ *State v. Pritchett*, 106 N. C. 667, 11 S. E. 357 (1890); *State v. Taylor*, 61 N. C. 508 (1868); *State v. Young*, 60 N. C. 126 (1863).

⁷² *State v. Taylor*, 61 N. C. 508 (1868).

cate that since the coroner acts as an examining magistrate⁷³ his proceedings may be certified to the court and the testimony of a witness taken at the inquest be used as substantive evidence, as provided by statute,⁷⁴ where the witness has since become incapacitated by insanity or illness, or has died, or by connivance of the defendant has removed from the jurisdiction, and if the defendant was present at the inquest and had an opportunity to cross-examine the disposing witness.⁷⁵ However, the North Carolina court takes the minority view⁷⁶ in holding inadmissible the examination, even though in writing, of a witness taken at a coroner's inquest when the witness is merely temporarily absent from the county at the time of the subsequent trial.⁷⁷ The court has also held inadmissible, as hearsay, testimony of an agent of a railroad company given at a coroner's inquest because given after having completed the acts within the scope of his agency and therefore not part of the *res gestae*.⁷⁸ However, it is provided by statute that testimony taken at a coroner's inquest, if signed and attested under seal, may be received as competent evidence in all courts for the purpose of contradiction or corroboration of the witness who made it.⁷⁹

During the inquest the accused himself may be examined, but the examination must not be upon oath, and before it is commenced the accused must be informed by the coroner of the charge against him and that he is at liberty to refuse to answer questions that may be put to him, and that his refusal to answer shall not be used to his prejudice in any stage of the proceedings.⁸⁰ If the accused is sworn⁸¹ or is not properly cautioned, his answer on the examination cannot be used against him.⁸² The statute does not apply when the accused testifies at his own request,⁸³ or when his statements are made voluntarily before the examination begins.⁸⁴

The coroner also possesses certain police powers which he may exercise in a limited way. Thus he may act to preserve the peace by assuming the duties of the sheriff if at any time there is no person qualified

⁷³ State v. Matthews, 66 N. C. 106 (1872).

⁷⁴ N. C. GEN. STAT. (1943) §15-100.

⁷⁵ For elaboration of this point see STANSBURY, NORTH CAROLINA EVIDENCE 145 (1st ed. 1946).

⁷⁶ 40 C. J. S. 1289, §309.

⁷⁷ State v. Grady, 83 N. C. 643 (1880).

⁷⁸ Southernland v. Wilmington and Southern R. R., 106 N. C. 100 (1890); Henderson v. Atlantic C. L. R. R., 159 N. C. 581, 75 S. E. 1092 (1912).

⁷⁹ N. C. GEN. STAT. (1943) §152-8.

⁸⁰ N. C. GEN. STAT. (1943) §15-89. Although this section as written refers only to magistrates and makes no specific mention of coroners, the Court, in State v. Matthews, 66 N. C. 106 (1872), construed it as extending to coroner's inquests since the coroner acts as examining magistrate.

⁸¹ State v. Parker, 132 N. C. 1014, 43 S. E. 830 (1903); State v. Vaughan, 156 N. C. 615, 71 S. E. 1089 (1911).

⁸² State v. Matthews, 66 N. C. 106 (1872).

⁸³ State v. Hawkins, 115 N. C. 712, 20 S. E. 623 (1894).

⁸⁴ State v. Conrad, 95 N. C. 666 (1886).

to act in that capacity in the county, and until some person is appointed sheriff the coroner is vested with all the powers, penalties, and liabilities of the office of sheriff.⁸⁵ Or, if at any time the sheriff of a county is interested in or a party to any court proceeding, it is proper that the summons be addressed to and served by the coroner.⁸⁶ Conversely, if the coroner is interested in or a party to any proceeding and there is no sheriff, then the clerk of the court from which the proceeding issues is directed, by statute, to appoint some suitable person to act as special coroner to execute the process.⁸⁷ The words, "any proceedings in any court," contained in the statutory provision for deputizing special officers where the coroner and/or sheriff is interested have been given literal interpretation and is held applicable even to courts of justices of the peace as well as to the higher courts.⁸⁸

CRITICISM

It is believed that the ancient and honorable office of coroner, which has undergone so little change in this jurisdiction since the very birth of our state, has become antiquated and outmoded by advances in both the fields of medical science and administration of justice—advances with which the very structure of the office has prevented it from keeping step. This has happened in spite of legislative attempts to the contrary, and largely because those legislative attempts have not been far reaching enough in consequence.

The most important duty of the coroner, the investigation of deaths in which an element of violence or criminal neglect is suspected, is medical in character. In medico-legal cases the necropsy, as a rule, requires greater attention to detail than in other cases of death. In many cases it requires a thorough knowledge of anatomy, toxicology, *material medica*, chemistry, and in some cases microscopic or immunological studies. Pathology is especially necessary in those cases where a considerable length of time has elapsed between the primary injury and the fatal result. In a criticism of the office of coroner as it existed in Texas in 1941, where many of the office's functions were similar to those in North Carolina today, the author^{88a} used as a specific example of the need for scientifically trained medical examiners to take over the medical functions of the office of coroner, those cases in which the unexplained death is a result of poisoning. In pointing out the exceedingly

⁸⁵ N. C. GEN. STAT. (1943) §§152-8, 162-5. However, it has been held that the failure of the county commissioners to declare the office of sheriff vacant upon the insanity of the occupant only authorized the coroner to perform the duties of sheriff proper and did not cast upon him the right to collect taxes. See *Somers v. Commissioners*, 123 N. C. 582, 31 S. E. 873, 68 ASR 834 (1898).

⁸⁶ N. C. GEN. STAT. (1943) §152-8; *State v. Baird*, 118 N. C. 854, 24 S. E. 668 (1896); *Bowen v. Jones*, 35 N. C. 25, 55 Am. Dec. 426 (1851).

⁸⁷ N. C. GEN. STAT. (1943) §152-8.

⁸⁸ *Baker v. Brem*, 127 N. C. 322, 37 S. E. 454 (1900).

^{88a} Lockhart, *The Antiquated Office of Coroner*, 4 TEX. B. J. 233 (1941).

difficult task of diagnosing poisoning he explains: "This arises from the fact that, with the exception in most cases of corrosives (as a class) and of strychnine, the symptoms produced by poisons are not clearly characteristic. Even the most experienced observer cannot always with absolute certainty distinguish the symptoms of poisoning from the symptoms of disease, and to the layman they may appear identical. There are authentic cases where real poisoning has occurred in which the poison given produced much the same symptomatology as a natural disease which was epidemic at the time."⁸⁹ Poisoning as a cause of death is not alone in surrounding itself with misleading external appearances. Others include contusions, abortions, concussions, blows to the viscera, asphyxiation, and suffocation. Numerous more will readily occur to the scientifically trained medical mind. Still other types of death, the anatomical evidences of which are frequently misleading, include suspended bodies and drowning. Professor Steward in cautioning physicians assisting in post-mortems quotes a case where it was claimed that the deceased was drowned, but where on the third post-mortem, a bullet which had entered the head through the opening in one of the ears, was found in the brain, and the murderer subsequently convicted and executed.⁹⁰ The external appearances of shock are also deceiving, as are wounds received after death has already occurred. The difficulties facing the coroner in the exercise of his medico-legal function are by no means confined to the situations set out above; those are but examples of his most frequently occurring problems.

It will doubtless be argued that those difficulties have been palliated by the statutes⁹¹ in extending to the coroner and his jury the privilege of soliciting medical assistance whenever it is deemed necessary. But, the statute is in effect a legislative recognition of the inefficiency of the present system. It must be remembered that the privilege is an optional one, the use of which is exercised only after an investigation of the external appearances of the deceased and the surrounding circumstances of the death—factors which, as has already been pointed out, are misleading and deceptive. The privilege of medical assistance then, even when utilized, is an inversion of the proper order of inquiry. Instead of first inquiring into the death by scientific medical approach and from the discoveries thus made, interpreting the surrounding circumstances, the coroner examines first the surrounding circumstances and from his layman's point of view attempts to pronounce the cause of death. Even when a physician is called in he is all too frequently handicapped by inadequate facilities to properly conduct a post-mortem. The fact still remains that the first question to be answered by the coroner's inquiry

⁸⁹ *Ibid.*

⁹⁰ STEWARD, *LEGAL MEDICINE* 84 (1st ed. 1910).

⁹¹ N. C. GEN. STAT. (1943) §§152-7(6), 152-5.

is: What was the cause of death? It is obvious that consistent accuracy can be obtained only when the answer is given by competent, scientifically trained medical examiners, supported by all the facilities of the medical profession.

Look now at the coroner as an administrator of justice. Once the cause of death has been ascertained, his function becomes judicial and with the crude machinery of his court he must decide what person, if any, is responsible for the death. In so doing he attempts to act as a criminal investigator, a position for which he has slight capacity due to his inadequate skill, training, and equipment. In initiating steps for the apprehension of the accused and in making commitments he acts as a magistrate. All these are functions which, pertaining to the serious matter of homicide, could best be executed by a skilled and practiced trial lawyer. It logically follows then that the county prosecutor, whose purpose it is to protect society against crime by the prosecution of offenders, is the proper officer for such duties.

As the office now exists there are few of the coroner's official acts which do not have to be done over again or which can be done at all without the assistance of the police and the district solicitor or his representative. It is significant that the coroner is required to notify the solicitor whenever it appears necessary to hold an investigation; a provision apparently intended to insure that the state be represented at the inquest by qualified legal counsel. This too is legislative recognition of the present inefficiency of the coroner system.

The coroner's investigation is of comparatively small value in further handling of the case other than to provide proof of death and to allow the coroner to act as committing magistrate. The slight use of evidence taken at the inquest has already been indicated. Even when allowed, although preservation of the records of each investigation is required by statute, practice has proved them to vary from detailed reports to mere notations and they are nowhere collected or correlated.⁹²

Many important steps in the process of investigating a homicide are left entirely to the coroner's discretion. In his discretion rests the decision as to whether an inquest is necessary or not and so there is little to impede a coroner with improper motives from declaring an inquest unnecessary and authorizing a speedy burial. The selection of the jurors is left almost entirely to his discretion. As has already been seen, the only limitations imposed on his selections are that they be freeholders, unrelated by blood or marriage to the accused and otherwise qualified as jurors. This gives the coroner practically a free hand and he may "pack" his jury so that the verdict will be just as he wants it to be. This situation is certainly incongruous for it will be recalled

⁹² Coates, *Accounting for Crime*, 16 N. C. L. REV. 364 (1938).

that the jury is regarded by law as an essential part of the inquest. Such uncontrolled authority in the hands of any officer or office is conducive of abuse.

It is also a regrettable fact that the coroner system, as effected in North Carolina today, is often the victim of the less desirable features of the American political system. In the transplantation of the English coroner system to America its essential redeeming feature was lost when the office was made elective and thus made subject to the whims of politics and to the importunities of the office seeker. Professional qualifications are frequently brushed aside for political expediency, and to the faults inherent to an anachronistic institution are added those of an inefficient official. That the results are subversive of justice can be denied by no one.

CONCLUSION

That the above described defects and inefficiency of the present coroner system are widely recognized wherever it is found is evidenced by the numerous studies and criticisms that have been made throughout the United States by both the medical and legal professions.⁹³ This survey of the North Carolina coroner system, as well as those just cited, have all led to the inevitable conclusion that the present coroner system as an institution of government is wholly unsuited to the needs of the present day. That reform is readily available by abolition of the present system and the adoption of a medical examiner plan, which would transfer the legal functions of the office to already existing agencies, has been recognized in several progressive jurisdictions.⁹⁴

The advantages of similar action in North Carolina are apparent. The judicial duties should be vested in the county prosecutor and the medical duties in a medical examiner who would operate as a part of the county health office. In this manner the best of equipment, training and skill of both the legal and medical professions could be concentrated on solving those problems which today are too frequently muddled be-

⁹³ See Schultz and Morgan, *The Coroner and the Medical Examiner* (BULL. NAT. RESEARCH COUNCIL, No. 64, 1928); Weinman, *op. cit. supra* note 48; Lockhart, *op. cit. supra* note 88a; Breyfogle, *Law of Missouri Relating to Inquests and Coroners*; 10 Mo. L. REV. 34 (1945); Wickersham, *Should the Office of Coroner be Abolished*, 1 MINN. L. REV. 197 (1917); STEWART, *LEGAL MEDICINE*, c. V. (1st ed. 1910).

⁹⁴ Massachusetts as early as 1877 abolished the office of coroner and created that of medical examiner. For present status of the office in that jurisdiction see MASS. ANN. LAWS (1944) c. 38 §§1 through 22.

The office of coroner was abolished in New York City in 1915 and the characteristic features and powers of the office were omitted by the same act in establishing the office of medical examiner. See N. Y. LAWS 1915, c. 284. Statute upheld in *In re Senior*, 221 N. Y. 414, 117 N. E. 618 (1917).

Other leaders in reforming the coroner system include Maryland (see MD. ANN. CODE GEN. LAWS [Flack, 1939] Art. 22, §§1 through 8); and Connecticut (see CONN. GEN. STAT. [1930] §§240 through 263).

yond solution by an institution which is fatally handicapped by its own antiquity.

The medical examiner should be appointed by the board of county commissioners and only physicians in good standing should be eligible for the office. As part of the county health department he would be assured of readily accessible medical facilities, such as equipment for microscopic examinations and chemical analysis, to assist him in his medical examinations. In cases requiring more extended facilities, which may not be provided by the county health office, then he should have resort to the laboratory and clinical facilities of the departmental and educational institutions of the state. In the thickly settled communities of the state, where deaths and homicides are more frequent, a permanent medical examiner would be necessary, but in the more sparsely settled counties the county health officer himself should act as medical examiner. Every death which occurs unattended by a physician or under suspicious circumstances should be investigated immediately by the medical examiner. His notification of death should be contemporaneous with that of the police, so far as is practical, and his investigation and report made before the police investigation is begun. This delay in the commencement of the police investigation must of course be confined to practical limits.

As soon as the medical examiner has completed his examination of the corpse and made his report, the office of the county prosecutor should be ready to throw all of its training, experience and professional ability into the criminal investigation of the death, if and when the medical examiner's report indicates that such an investigation is necessary. The investigation in such hands would be pertinent and not subject to the suggested inadequacies of the coroner's inquest. The coroner's jury would be no longer necessary. The naïve layman would be replaced by expert technicians in the observation of places and persons, in discovery, preservation and interpretation of fingerprints and other traces of human activity, in specialized photography and in general criminal investigation. Further, these technicians would be armed with adequate equipment for the examination and analysis of evidences of crime such as scientific analysis of projectiles and of ballistic imprints. Such facilities are all now available in the State Bureau of Investigation and under the present statute may be obtained upon request to the governor of the state.⁹⁵ But a slight modification of the present statute would be required to make these facilities available to the county prosecutor in cases of homicide. Such a move would open another avenue to the detection and restraint of crime.

The comparison of the coroner system with the medical examiner

⁹⁵ N. C. GEN. STAT. (1943) §§114-12 through 114-18.

plan is so greatly to the advantage of the latter that it is surprising that the medical examiner plan has not already been adopted in North Carolina, the state which has been the Southern leader in so much progressive legislation. The explanation probably lies in the fact that the coroner is a part of our well established political scheme; that the entire subject of forensic medicine is so highly technical that the layman does not have the proper conception of its importance; and in the public inertia toward constitutional changes. It should be remembered that not only is the medical examiner plan overwhelmingly more efficient than the coroner system, but that it has proven more economical financially.⁹⁶

That the change be made cannot be too strongly urged. The North Carolina public health program already covers ninety-two of its one hundred counties. Part of this public health program is supported by federal appropriations, it is true, but it is the opinion of the public health authorities that the federal government will voice no objection to the installation of the medical examiner plan as a part of the North Carolina public health system. Seventy counties already have county prosecutors.⁹⁷ Sixty-six of these seventy counties have a public health program. It is suggested that the medical examiner plan be put into effect in these counties as soon as the necessary constitutional amendment can be made and that the present coroner system be continued in the remaining thirty-four counties until adequate local provision has been made for a change.

SUMMARY OF RECOMMENDATIONS

It is recommended:

- (1) That the North Carolina Constitution be amended to abolish the office of coroner.
- (2) That the medical functions of the present coroner's office be vested in the office of medical examiner.
- (3) That the office of medical examiner be a part of the county health organization and be compensated by a salary which will attract men of genuine scientific training and ability.

⁹⁶ See survey of comparative costs of the two systems by Schultz and Morgan, *supra* note 93.

⁹⁷ The counties are: Alamance, Anson, Beaufort, Bertie, Bladen, Cabarrus, Caldwell, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Iredell, Johnston, Lenoir, Lincoln, Martin, McDowell, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wayne, Wilson.

- (4) That in addition to the facilities of the county health department, all the laboratory and clinical facilities of the educational and departmental institutions of the state be made available to the medical examiner.
- (5) That the non-medical duties of the coroner's office be vested in the office of county prosecutor, and that the full facilities of the State Bureau of Investigation be made available to him, when necessary, in investigating a homicide.

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LEGISLATION 1947—ESCHEATS

After the legislative summary in the June issue¹ of the REVIEW was in press the position of the Comptroller of the Currency with reference to the new North Carolina statute was clarified in letters from his office. The following excerpts are of interest:

"We think that this North Carolina statute is inapplicable to funds held by the United States in trust in the District of Columbia under the provisions of the National Bank Act, a code by itself for winding up insolvent National banks. Such funds respond for Federal Government obligations incurred in and to be performed in the District of Columbia and not for debtor obligations of National banks incurred in and to be performed in the State where the bank was located. The Government's obligation is evidenced in substantial part by its outstanding negotiable instruments that may be in the hands of holders for value located in or out of North Carolina. All recognized claims are assignable. The receiverships of National banks that became insolvent in North Carolina have long since been closed and no funds remain for administrative or other expenses."²

". . . the funds necessary to respond for all claims proved to the Comptroller's satisfaction under Title 12 U. S. C. 194 and for delivered and undelivered dividend checks thereon are retained by the Comptroller indefinitely. Such funds cannot be used to enlarge payments to other claimants and cannot be paid to shareholders."³

Of the above two things may be said: (1) So far as I can learn the practice has been to deposit funds realized from insolvent national banks in another bank in the same city or vicinity and to draw them out to claimants by the receiver's check on such local depository (although at the termination of the receivership years later the remaining undisbursed funds may be transferred to the Comptroller's credit with the U. S. Treasury, with a Federal Reserve Bank or with some bank in the District of Columbia). It seems to me, therefore, a novel idea that the "funds (are) held by the United States in trust in the District of Columbia," (though that might be considered as the domicile of the United States). It is also a surprising view that the obligations to claimants are incurred in the District, whatever may be thought as to the place of

¹ Survey of statutory changes, 25 N. C. L. Rev. 421 (1947).

² Letter of C. B. Upham, Deputy Comptroller, to L. P. McLendon, Chairman of the Escheats Committee of the Board of Trustees of the University, May 21, 1947.

³ Letter of R. B. McCandless, Deputy Comptroller, to M. S. Breckenridge, June 5, 1947.

performance. (2) Since the Comptroller does not recognize the tontine theory referred to in the note⁴ appearing in the June, 1947 REVIEW to the full extent but retains the unpaid funds "indefinitely," the administrative practice is in effect a limited escheat to the Federal Government without specific statutory basis.

⁴ Survey of statutory changes, 25 N. C. L. REV. 421, 423, footnote 13 (1947).