

Approved February 27, 1992
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE M. J. JOHNSON at
Chairperson

1:35 ~~xxx~~/p.m. on FEBRUARY 20, 1992 in room 521-S of the Capitol.

All members were present except:

Representative George Gomez, excused
Representative Jack Wempe, excused

Committee staff present:

Mike Heim, Legislative Research Dept.
Theresa Kiernan, Revisor of Statutes
Connie Smith, Committee Secretary

Conferees appearing before the committee:

Representative Elizabeth Baker
Judge Michael Corrigan
Shannon S. Krysl, a civil trial lawyer from Wichita, Ks.
Dr. Carol Moddrell, representing the Kansas Society of Pathologists
Randy Hendershot, President of Kansas County & District Attorneys
Association
Ed Van Petten, Deputy Attorney General in the Criminal Division
Chip Wheelan, Kansas Medical Society

The Chair called for hearings on HB 3047 - State medical examiners board; established and HB 2837 - Grounds for removal from office of district coroners.

The Chair recognized Representative Elizabeth Baker who addressed both bills and provided written testimony. She also distributed letters of support from Dr. William Reals and Steven D. Trainer. (Attachment 1)

Next to testify in support of HB 2837 was Judge Michael Corrigan from Wichita, who shared the same concerns as Representative Baker.

Shannon S. Krysl, a civil trial lawyer from Wichita, Ks., provided written testimony to assist the committee in solving the dilemma the court and litigants face in her area of the state. (Attachment 2)

Dr. Carol Moddrell, District Coroner for Douglas Co. and a Pathologist, appeared as a proponent to HB 3047 and provided written testimony. (Attachment 3)

Randy Hendershot, President of Kansas County & District Attorneys Association, testified as a proponent to HB 2837 and HB 3047. (Attachment 4)

Ed Van Petten, Deputy Attorney General in the Criminal Division, testified in support of HB 3047 and HB 2837 with a few minor changes in HB 3047. (Attachment 5)

There were no other proponents.

The Chair called on Chip Wheelan, Kansas Medical Society, who testified as an opponent to HB 2837 and provided written testimony with a copy of a proposed amendment. (Attachment 6)

Chair opened it for questions from the committee.

The Chair thanked the conferees for coming and closed the hearings on HB 3047 and HB 2837.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,
room 521-S, Statehouse, at 1:35 ~~a.m.~~^{p.m.} on FEBRUARY 20, 1992

Representative Jess Harder appeared before the committee to request a bill on behalf of the Recreation Commission and School District No. 308 in Hutchinson in regard to establishing a joint recreation commission.

A motion was made by Representative Richard Lahti to introduce the request; seconded by Representative Carl Holmes. The motion carried.

The meeting was adjourned at 3:04 p.m.

ELIZABETH BAKER

REPRESENTATIVE, EIGHTY-SECOND DISTRICT
 SEDGWICK COUNTY
 601 HONEYBROOK LANE
 DERBY, KANSAS 67037



TOPEKA

HOUSE OF
 REPRESENTATIVES

OFFICER: BOARD OF TRUSTEES
 WICHITA STATE UNIVERSITY
 REGIONAL OMBUDSMAN: KANSAS
 COMMITTEE FOR EMPLOYEE
 SUPPORT OF THE GUARD AND
 RESERVE
 COMMITTEE ASSIGNMENTS
 STATE FEDERAL ASSEMBLY: COMMERCE, LABOR
 & REGULATION
 RANKING MINORITY MEMBER: FEDERAL & STATE
 AFFAIRS
 MEMBER: ECONOMIC DEVELOPMENT
 ELECTIONS

February 20, 1992

To: House Committee on Local Government

From: Representative Elizabeth Baker

Re: HB 2837 and HB 3047

Thank you Madam Chairperson and members of the committee for the opportunity to appear before you today in support of HB 2837 and HB 3047. HB 2837 is a very simple proposal that allows the person who appoints the coroner the authority to remove the coroner under certain conditions. HB 3047 is an extensive proposal that creates a state medical examiners investigation board. This legislation is modeled after a law that was used to establish the medical examiners investigation board in Oklahoma.

The problems in the Sedgwick County Coroner's office are multiple and are indicative of a larger problem that is facing Kansas. It is time for the Kansas Legislature to address our states outmoded system of dealing with unattended death. Kansas is one of only 16 states that place preliminary death investigations in the hands of the coroners. Our Kansas coroners are not trained in the field of forensic pathology. A morgue, lab, autopsy room equipment, located in a centralized medical examiners office are essential in modern criminal investigations, but Wichita is one of just a few large cities that is not properly equipped. Dr. William Reals, vice-chancellor of the University of Kansas, School of Medicine at Wichita believes it is time to scrap the system. "We have a coroner's system that harkens back to medieval England. You need photographers; you need toxicologists; you need lab attendants. We don't have any of that stuff. We don't even have a morgue. We use a mortuary service to do autopsies. We have an archaic system here." HB 3047, to establish a state medical examiners investigation board, would meet Kansas' needs as we approach the 21st century. Since this proposal involves major policy decisions on the part of the legislature, it is my suggestion that this committee place HB 3047 at the forefront of the list of topics for interim study in 1992.

Ly
 2-20-92
 Attach. 1

HB 2837, that gives the appointing judge the authority to dismiss for cause, is a simple change that provides a reasonable solution if problems are insurmountable. Briefly let me acquaint you with the concerns that have been raised repeatedly in my community. The list of complaints is lengthy and ranges from simple paperwork delays, inaccurate and incomplete reports, to the fear that the office may be overlooking key evidence in homicide cases. It is the opinion of many including myself, that the operation is definitely antiquated and in some instances both cruel and dangerous to our citizenry. I have included with my testimony copies of articles that appeared in the Wichita Eagle this past fall. In an editorial of October 3, 1991, "the Sedgwick County district coroner's office is woefully inadequate to its important task". The message is clear. The time has arrived for the legislature to take action.

Last year Judge Michael Corrigan established the District Coroner Study Committee to examine all possible avenues for reform of the system. The membership of that committee was composed as follows: Dr. Robert Daniels, District Coroner, Dr. William G. Eckert, Deputy District Coroner, Dr. Paul Harrison, Trauma Surgeon, Dr. Joe Lin, Pathology Director at St. Francis Regional Medical Center, Nola Foulston, District Attorney, Jim Puntch, Assistant District Attorney, Maj. Leo Willey, Sedgwick County Sheriff's Office, Lt. Ken Landwehr, Lab Commander, Wichita Police Dept., Robert Sterbins, Funeral Director, Culbertson-Smith, Henry H. Blase, Sedgwick County Counselor. From that committee came an amendment to K.S.A. 22a-226 which became HB 2837. They officially took action on this proposal, January 22, 1992 with eight members voting affirmatively, one in the negative, and one abstaining. The opportunity was given to explain their votes. From correspondence from the County Counselor's office concerning the explanation of those votes: "Dr. Daniels, the coroner, explained that his "no" vote was based on the fact that no doctor would want to be fired in the media from a job in which they are providing public service, and that this amendment will make it more difficult to get doctors to serve. Dr. Eckert, Deputy District Coroner, stated that he abstained for obvious reasons, but stressed the fact that there is no training for District Coroners available."

When I requested individuals to come before this committee and testify in favor of this bill they repeatedly expressed their fear of retaliation by the coroner's office. Quite frankly, I was shocked by the response I received upon telephoning the very same individuals with whom I had previously visited concerning the severity of the problems that exist in the coroner's office. This fear was expressed by funeral directors, police officers, elected officials and bureaucrats. These comments only strengthened my resolve to bring this issue before you today in an attempt to disperse the dark clouds that surround it. In my ten years serving in the Kansas House of Representatives I can not remember citizens being so fearful of playing a part of the democratic process. That kind of fear has no place in the hearing rooms of this stately old building. I urge your support of HB 2837 and HB 3047.

Sunny,
windy and
warmer

HIGH 80s

LOW 50s

Details/ 2B

Weatherline ©
838-2222

Conversion gives peace new chance

Center replaces
violent club/ 1B



THE LAMAR expedition

Latest search to begin/ 1D

as Wildcats lose at Washington

Huskies end K-State's
win streak 56-3/ 1G

tor older adults

Being closer to the kids
can pose problems/ 1E

Today's editorials: A prairie monument;
rural sex; Seurat comes alive/ 12A

SUNDAY

September 29, 1991

The Wichita Eagle

KANSAS

EDITION
\$1.25

An office stretched to its limits

Adequacy of coroner system questioned

By Hurst Laviana
The Wichita Eagle

The Sedgwick County district coroner's office, a small but vital cog in the local criminal justice system, is in disrepair.

And its critics contend that the two doctors who have been in charge of the office for the past two decades are running an outdated system but are unwilling to improve it.

Most Wichitans have little or no contact with the coroner's office, which is charged with investigating every unattended death in the county.

But in criminal investigations, the coroner's ruling on a cause of death can be the basis of criminal charges and a

MORE INSIDE

Wilson case: Badly handled
probe drew attention to office.

Misplaced report: Anguished
parents just wanted answers.

The law: When and why autopsies
are conducted.

Anatomy of an autopsy: Sit-
ting through the procedure.

Stories on Page 9A

successful or unsuccessful prosecution. In non-criminal cases, relatives rely on the coroner to find why loved ones have died unexpectedly.

Those who are now pushing for change note that Kansas is one of only 16 states that place all preliminary death investigations in the hands of coroners

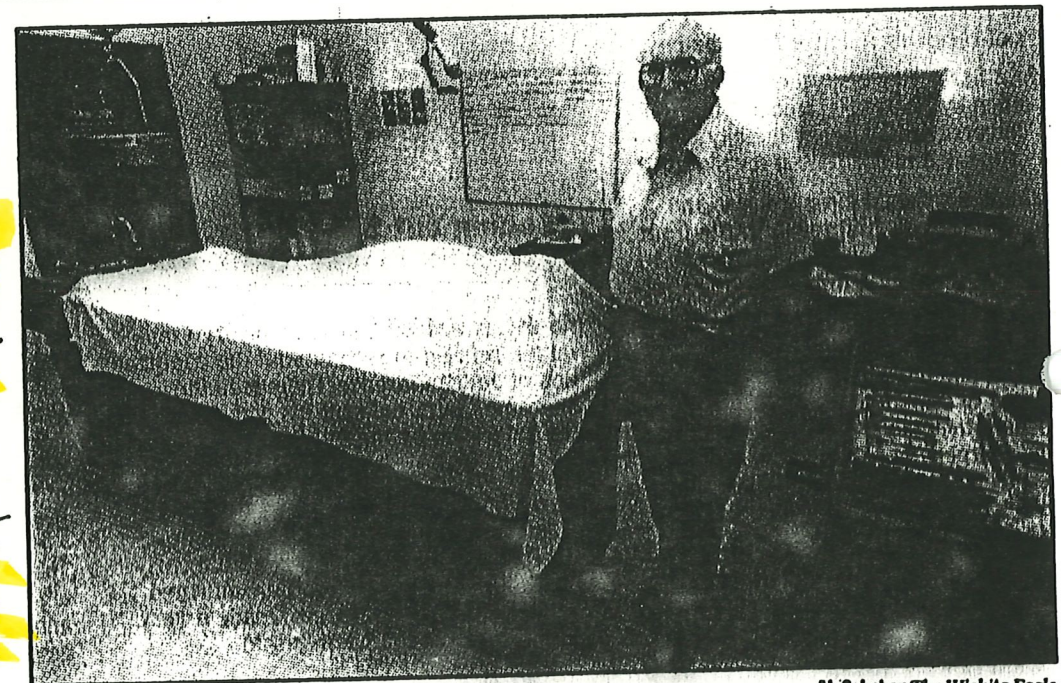
who are not trained in the field of forensic pathology.

And they point out that Wichita is one of a few large cities that do not have a centralized medical examiner's office with a morgue, lab, autopsy room and X-ray equipment.

As a result, critics say, the office produces inaccurate or incomplete reports, and it takes too long to file them. For too long, they charge, the county has relied on a single pathologist to perform autopsies, and he is working in a mortuary not fully equipped for death investigations.

At best, some law enforcement officials say, the coroner's office has been an irritating snag in the local criminal justice system. At worst, they fear, the office may be overlooking key evidence in homicide cases.

See CORONER, Page 8A



Al Schabow/The Wichita Eagle

Deputy Coroner William Eckert prepares to perform an autopsy.

Elderly couple

Flint Hills explorer

SAC fleet

The Coroner System: Stretched to the Limit

CORONER

Critics say the system is archaic

From Page 1A

The two men running the present system, District Coroner Robert Daniels and Deputy Coroner William Eckert, concede that they need one or more backup pathologists, but say the critics are exaggerating the problems.

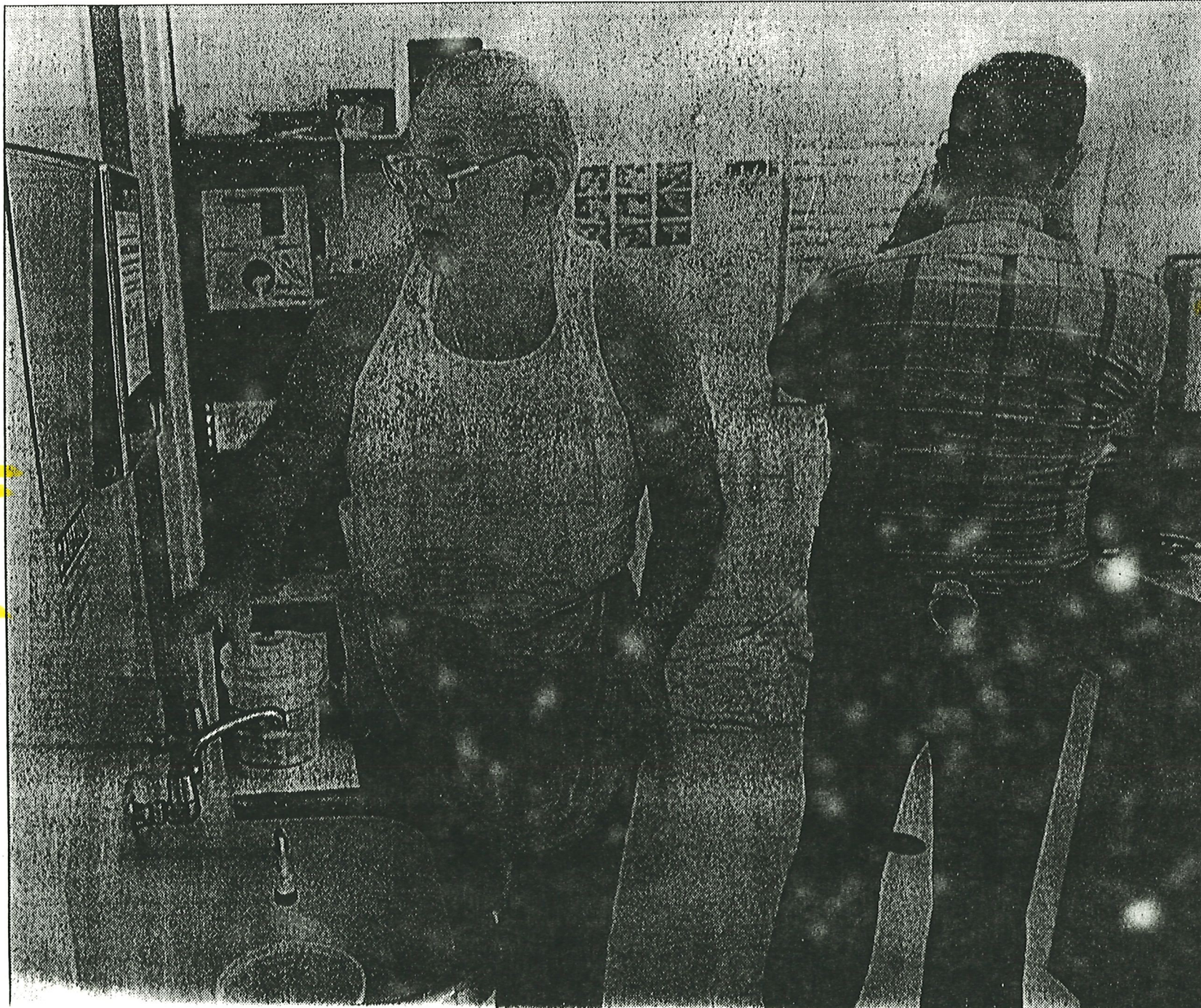
But William Reals, vice chancellor of the University of Kansas School of Medicine in Wichita, is one who thinks it's time to scrap the system.

"We have a coroner's system that harkens back to medieval England," he said. "You need photographers; you need toxicologists; you need lab attendants. We don't have any of that stuff. We don't even have a morgue. We use a mortuary service to do autopsies. We have an archaic system here."

Under most coroner systems, which are widely used in rural areas, doctors or funeral directors work part time overseeing death investigations. If an autopsy is needed, they hire pathologists. Blood samples are sent to area labs. X-rays are done at local hospitals.

Under a medical examiner's system, which is used primarily in urban areas, a full-time forensic pathologist trained in legal medicine runs the show. The office often is housed in a building that includes a morgue, autopsy room, X-ray equipment and a lab.

Status quo in question



pert on plane crashes, no longer performs autopsies.

Both men said most hospital pathologists can perform autopsies — even in murder cases. But inside the courtroom, they said, hospital pathologists can be easily outgunned by forensic pathologists hired by defense lawyers.

"All of 'em can do autopsies," Reals said. "But a forensic pathologist is specifically oriented to the law."

"If you don't have a forensic pathologist on these major cases, you're going to be sucking wind," Eckert said.

Although there are more than 10,000 hospital pathologists in the United States today, there are only about 250 active forensic pathologists. Daniels said that many of those command annual salaries of more than \$100,000.

The Sedgwick County Commission this year increased the fee paid to deputy coroners from \$350 to \$450 for each autopsy. But Daniels said the fee was still so small by national standards that he hasn't bothered to advertise for a backup.

In past years, hospital pathologists performed autopsies when Eckert was out of town. For a year or so, Eckert has been backed up by Kansas City, Mo., pathologist Bonita Peterson, who was medical examiner in Jackson County, Mo., for 16 years before resigning in November 1989.

"It's not a field that attracts a lot of people," Peterson said. "A lot of pathologists don't want anything to do with testifying — or with the seedier side of life."

Although Peterson served as Eckert's backup for more than a year, the recent death of another Kansas City forensic pathologist, James Bridgens, will probably end the arrangement. Bridgens had been performing autopsies in Johnson County, and county officials last week

housed in a building that includes a morgue, autopsy room, X-ray equipment and a lab.

Status quo in question

In Wichita, autopsies are performed by Eckert, 64, one of the nation's most experienced forensic pathologists, whose abilities now are being questioned by some. As a deputy district coroner, Eckert forwards his autopsy reports to Daniels. Daniels reviews the reports and fills out death certificates. Daniels, 67, then rules whether each death is a homicide, suicide, accident or natural occurrence.

Daniels is paid \$38,861 annually in his part-time job as coroner. Eckert receives a flat fee of \$450 for each autopsy and should receive more than \$100,000 in fees this year.

Many law enforcement officials said they are reluctant to openly criticize Eckert or Daniels because the coroner's office plays such a vital role in homicide investigations.

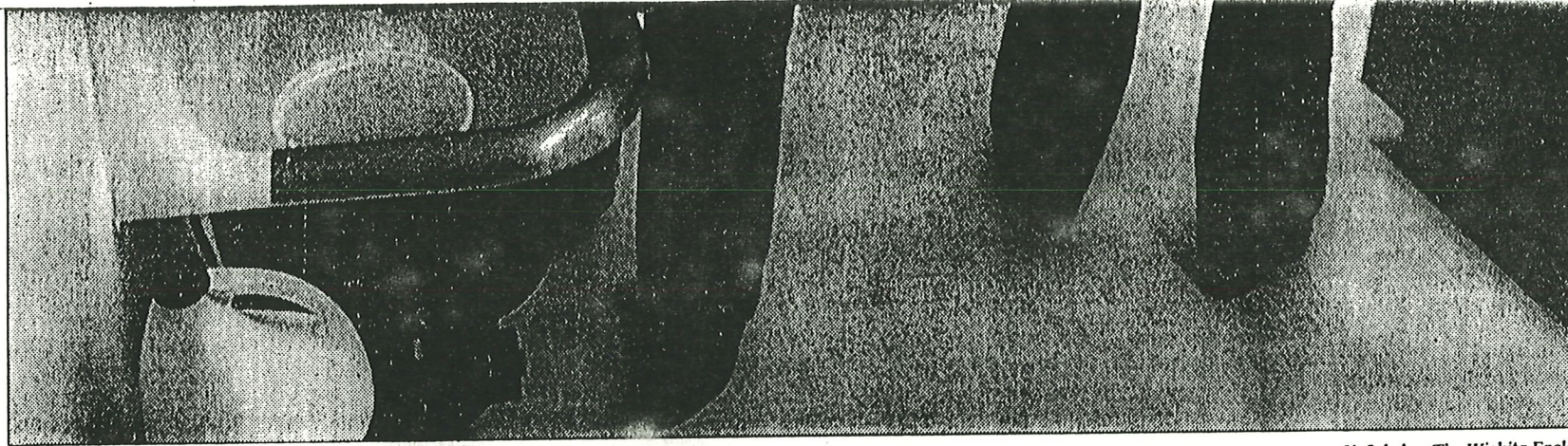
But a grand jury looking into the shooting death of a Haysville man said last month that the coroner's office was operating in "less than a professional manner." Many law enforcement officials think the problems go much deeper, and that the city needs to scrap the system and start a medical examiner's office.

"We live in a community of 400,000-plus people," said Sedgwick County District Attorney Nola Foulston, who is on a committee looking at problems with the existing coroner's system. "We cannot afford to have a mom-and-pop coroner's office."

Although they admit there are problems with the office, Eckert and Daniels say they don't think a complete overhaul is justified. The only major problem with the office, they say, is the need for a backup pathologist.

"He's the chief, I'm the deputy, and that's it," Eckert said. "Two men can't carry the whole damn thing."

Daniels said that establishing a medical examiner's office is imprac-



Al Schaben/The Wichita Eagle

Eckert washes up after an autopsy while a police inspector photographs an organ measurement chart for the record.

bodies — must be shuffled from place to place. Autopsies are performed at Diplomat Mortuary Service, 901 E. Gilbert. But if X-rays are needed, bodies must be taken to local hospitals. Blood and urine samples are sent to labs, sometimes across state lines.

Autopsy reports, meanwhile, usually are mailed to Daniels' home in Valley Center. There, Daniels reviews the reports before preparing death certificates. He goes to the sixth floor of the Sedgwick County Courthouse — usually twice a month — and files the paperwork. It can take a month to complete a routine coroner's case.

■ The paperwork occasionally delays criminal cases. More often, it frustrates grieving relatives who simply want to know why a loved one died. Relatives' complaints prompted Administrative Judge Michael Corrigan last year to establish the District Coroner Study Committee — the group now looking into the medical examiner's system.

The committee, made up of doctors, funeral directors and law enforcement officials, decided last year that two weeks should be enough time to file the coroner's paperwork. But less than a quarter of the 164 coroner's reports filed since May were filed within that time.

The committee that

The two systems

Coroner

Run by

A doctor or funeral director working part time.

Staffed by

Usually no full-time workers. Some have a secretary to handle the paperwork.

Autopsies performed by

Local pathologists, who may not be trained in legal medicine and who are paid on a per-case basis.

Facilities

Usually none. Some systems include a secretary and an office for the coroner. Autopsies usually are performed at a local hospital or mortuary service. Lab and X-ray work must be sent to outside facilities. Bodies awaiting autopsy sometimes are stored in embalming rooms or hallways.

Cost

Medical examiner

A full-time forensic pathologist trained in legal medicine.

One or more backup forensic pathologists, death investigators who gather evidence at scenes of suspicious deaths, and secretaries who handle paperwork.

Staff doctors trained as forensic pathologists.

A morgue, autopsy room, X-ray equipment, lab for testing tissue samples, and secretaries who type and file reports.

tract judges then appoint one of the candidates to a four-year term.

In Sedgwick County, Daniels was appointed coroner in 1964 after the Kansas Legislature removed the position from the list of elective offices. Since that appointment, Daniels said, he has heard of no other doctors who have applied for the position.

Three years into Daniels' first term, Eckert came to Wichita to help set up a computerized laboratory at St. Francis Regional Medical Center. Already certified as a forensic pathologist, he became Daniels' top deputy.

For the past 24 years, Daniels and Eckert have run the coroner's office with little controversy. Daniels usually remained in the background as Eckert gained widespread recognition through his testimony in murder trials.

Eckert also has attracted some media attention through his twice-yearly seminars on death investigations. The seminars draw coroners and law enforcement investigators from throughout the Midwest.

"He has been a tremendous benefit to law enforcement," said Sedgwick County sheriff's Maj. Leo Willey, who has supervised dozens of homicide investigations. "I cannot imagine how we could have done nearly as well in criminal investigations without Bill Eckert."

City forensic pathologist, James Bridgens, will probably end the arrangement. Bridgens had been performing autopsies in Johnson County, and county officials last week named Peterson as his replacement. Daniels said he did not expect Peterson to continue working in Wichita.

Although the hiring of an additional pathologist was a long-term goal of the coroner's committee, improving the quality and accuracy of reports was cited as an immediate concern.

Foulston said the coroner's committee hired the new secretary, in part, to edit paperwork and eliminate discrepancies between autopsy reports and death certificates. The secretary also was supposed to standardize autopsy reports, which can vary widely from one pathologist to another.

Eckert and Peterson both perform autopsies in the same manner, but their reports can vary widely.

"He is terse; she's complete," one official said. "He has typos."

Eckert, for example, used just 103 words and filled in nine blanks in his autopsy report on a victim of sudden infant death syndrome. In a similar case, Peterson used 564 words to explain the death of another SIDS victim. Details such as "the hands are in tightly clenched fists" appear in Peterson's reports but not in Eckert's.

"They are pretty brief, I admit," Daniels said of Eckert's reports. "But I've seen him in action. He's a master. He knows what to do and what to look for."

But Foulston and other prosecutors said paperwork in homicide cases needs to be detailed and accurate. Too often, they said, it is not.

In the recent trial in the murder of Donna Jabara Baker, the death report said the victim was found fully clothed in her bedroom. A corrected report more accurately reflected the trial testimony, which showed that she was partially clothed when found.

Misspelled names and typographical errors, while not the rule, frequently appear in death and autopsy

1-5

"He's the chief, I'm the deputy, and that's it," Eckert said. "Two men can't carry the whole damn thing."

Daniels said that establishing a medical examiner's office is impractical. With only about 250 active forensic pathologists in the country, many of them commanding salaries of \$100,000 or more, Daniels said that finding a full-time pathologist would not be easy.

Eckert, whose medical background would qualify him for the job, said he didn't want the headaches that would go with running the show.

Daniels also said he doesn't agree with those who think the city can afford a complete medical examiner's office like the ones operating in Dallas, Tulsa and Oklahoma City.

"They're living in a dream world," he said. "They make it just sound so easy."

Despite Daniels' objections, a committee looking into complaints about the coroner's office is seriously considering bringing the concept to Wichita. The committee's chairman, Sedgwick County Counselor Hank Blase, said the group is planning to visit Dallas this fall to tour the medical examiner's office. The group also has studied the statewide system used in Oklahoma.

Blase said the group does not know how much it would cost to bring a medical examiner's system to Wichita. But he said that hiring a full-time forensic pathologist to begin building the system could be done for the same \$290,000 it now costs to run the coroner's office.

Laundry list of complaints

Reals, Foulston and others on the committee said the existing part-time system creates hardships on police, prosecutors and even funeral directors who simply need the coroner's signature before cremating a body. Among the problems they cited:

■ The office is not centralized. Paperwork, tissue samples — even

year that two weeks should be enough time to file the coroner's paperwork. But less than a quarter of the 164 coroner's reports filed since May were filed within that time.

Daniels told the committee that many delays were, in part, the fault of a backup deputy coroner, David DeJong, who is no longer with office. In many cases, Daniels said, sending blood samples to out-of-state labs makes it impossible to complete a case in two weeks.

■ In an effort to speed the paperwork, county officials last year increased the coroner's budget from \$166,000 to \$290,000. They opened a coroner's office in the Old County Courthouse, hired a secretary, installed a phone and bought a tape recorder that pathologists could use to dictate their reports. But the office and its equipment go unused, and the delays continue.

Daniels said he simply saw no need for the office or the secretary. "That was the committee's idea," he said. "I told them we tried that twice before and it failed."

■ With autopsy reports and death certificates not being reviewed by a secretary, mistakes and inconsistent work creeps into the court system. The names, ages, and dates on death certificates frequently conflict with information on autopsy reports.

In one recent homicide, a report by Eckert said that Thomas King, 30, of 1717 N. Hillside, was shot to death on June 3. But in fact, it was James R. King, 36, of 1322 N. Chautauqua, who was shot — on June 2. Prosecutors, who discovered the faulty report a day before a preliminary hearing in the case, were forced to scramble to get the report corrected and refiled less than an hour before the hearing began.

■ Some criminal justice experts say the most serious problem with any coroner system is that it can let murders go undetected. Twice in the past decade, murderers in Wichita have concealed their crimes — temporarily — despite the scrutiny of the coroner's office.

work must be sent to outside facilities. Bodies awaiting autopsy sometimes are stored in embalming rooms or hallways.

Cost
\$290,000 annually.

Yet to be determined; \$290,000 probably would allow a start, but a full system would cost much more.

The Wichita Eagle

Missing links

On Feb. 18, 1985, Lois Wacker persuaded her 9-year-old stepson to shoot his adopted father in the head. The case, originally called a suicide, was reclassified three months later when the boy told detectives what really happened. Wacker, then 18, was convicted of second-degree murder and sentenced to 15 years to life in prison.

On Dec. 6, 1988, 35-year-old Patricia Davis died in what was ruled an accidental overdose of prescription medicine. The woman's ex-husband, Wesley Davis, 36, was arrested three months later after bragging that he had committed the perfect crime by inserting cyanide into his wife's vagina. He, too, is serving 15 years to life in prison.

One of nation's most celebrated misdiagnosed murders of the 1980s occurred in Emporia, where a coroner ruled that the July 17, 1983, death of the wife of minister Thomas Bird was accidental. The case was reclassified after prosecutors implicated Bird in his wife's murder and the shooting death of his lover's husband.

No one can say whether a murder has ever escaped the attention of Sedgwick County authorities. But even forensic pathologists say that not every autopsy reveals a clear-cut cause of death.

Consider the case of a 51-year-old man whose body was found in the 400 block of North Mosley in August. Police classified the case as an

accident. Eckert said in his autopsy report that the man died of massive head injuries and had numerous bruises on his legs and body. Daniels listed the cause of death as undetermined.

13th-century roots

The coroner systems used in the United States today bear little resemblance to those used in 13th-century England, where the idea of coroners originated. In those days, coroners were hired to determine whether recently deceased citizens owed taxes to the crown.

Over the years, coroners' powers grew to include death investigations and the filing of criminal charges in homicide cases. Their powers subsequently eroded as police and prosecutors assumed control of homicide investigations.

Today, Kansas and 15 other states use coroners to investigate suspicious deaths. Fifteen states use a combination of coroners and medical examiners, while 19 states and the District of Columbia have full-time medical examiners.

Medical examiner's offices usually are run by certified forensic pathologists who have been trained in legal medicine. Many of the smaller coroner's systems are run by funeral directors who work part time as coroners.

Unlike some states, Kansas requires its coroners to be practicing physicians. Medical societies in each of the state's 31 judicial districts submit lists of coroner candidates. Dis-

wick County sheriff's Maj. Leo Willey, who has supervised dozens of homicide investigations. "I cannot imagine how we could have done nearly as well in criminal investigations without Bill Eckert."

Although Eckert's career was interrupted by heart surgery in 1989, he has recovered and is again performing autopsies. And, for the first time, he has begun to draw criticism from law enforcement officials. Some of the strongest criticism came from the district attorney's office after Eckert was hired by the family of a man who was shot to death by a Haysville police officer last year.

Police and prosecutors said the man was shot after pointing a gun at the officer. Eckert, after conducting an independent autopsy, said bullet wounds on the man's fingers showed he was not holding a gun when he was shot. Eckert later retracted the statement, saying he had based his conclusion on faulty information.

Eckert's abilities also were questioned last October in Garden City, after he testified on behalf of Diana Lumbrera, who was charged with smothering her 4-year-old son. At Lumbrera's trial, Eckert said he performed a microscopic examination of the boy's lungs, liver and heart and found evidence that the child died of a virus.

The jury, however, later was told that the child's organs had been removed during the earlier autopsy and had not been made available to Eckert. Lumbrera was convicted of first-degree murder.

At the time, he attributed the mistake to a failure to check records to see which organs he had tested. Today, he stands by his conclusion that the child died of a virus and says the Lumbrera trial was as close to a "lynching" as he's seen in Kansas.

Help can be hard to find

Today, Eckert and Reals are the only two certified forensic pathologists living in Kansas. Reals, an ex-

pected report more accurately reflected the trial testimony, which showed that she was partially clothed when found.

Misspelled names and typographical errors, while not the rule, frequently appear in death and autopsy reports, particularly those filed by Eckert.

An expensive option

During its initial research, the coroner study committee looked at the state medical examiner's office in Oklahoma, which uses its \$2.6 million annual budget to operate offices in Tulsa and Oklahoma City.

Ray Blakeney, director of operations for the office, said the state employs five full-time forensic pathologists, who are paid \$60,000 to \$75,000 a year, and five death investigators, who receive \$20,000 to \$25,000 annually.

"The first thing you're going to have to do is address the pay of forensic pathologists," Blakeney said. "Unless you can get the pay up to where you can compete nationally, you're going to have problems."

In Oklahoma, he said, the system has been worth the price.

"A medical examiner's system is medical and non-political," Blakeney said. "Your coroner's systems tend to be very political and non-medical."

Alan Hancock, Wyandotte County district coroner and president of the Kansas Coroner's Association, disagrees. He said Kansas could not afford a statewide system.

"You're talking a lot of money," he said. "For the benefits, I don't really think you gain that much."

Reals, on the other hand, said that even if it would cost \$1 million, Wichita needs to have a medical examiner's building that contains a morgue, autopsy room, lab, and X-ray equipment.

"You have no concept of what a real medical examiner's system looks like," he said. "We get by, this isn't best way to do it."

The Coroner System: Stretched to the Limit

Anatomy of an autopsy

Pathologists learn to watch for the unexpected, unusual

By Hurst Laviana
The Wichita Eagle

The room is filled with the ear-splitting sound of a Stryker surgical saw as it bores into the skull of a cadaver lying on an 8-foot-long autopsy table.

A 3-inch-high lip around the table's edge keeps the blood from spilling onto the white tile floor. A copper pipe lining the inner lip sends jets of water streaming across the table, flushing body fluids to a nearby drain.

With a broad slice down the belly, Deputy District Coroner William Eckert begins his investigation into the death of an apparent suicide victim who was found with a bullet wound in his right temple.

"Do we have a note on this guy, Pat?" Eckert asks.

"Not that I'm aware of," says Pat Cunningham, the detective assigned to the case.

Eckert, the only active forensic pathologist in Kansas, has performed 20,000 autopsies in his 35

years of practice. But he's still skeptical.

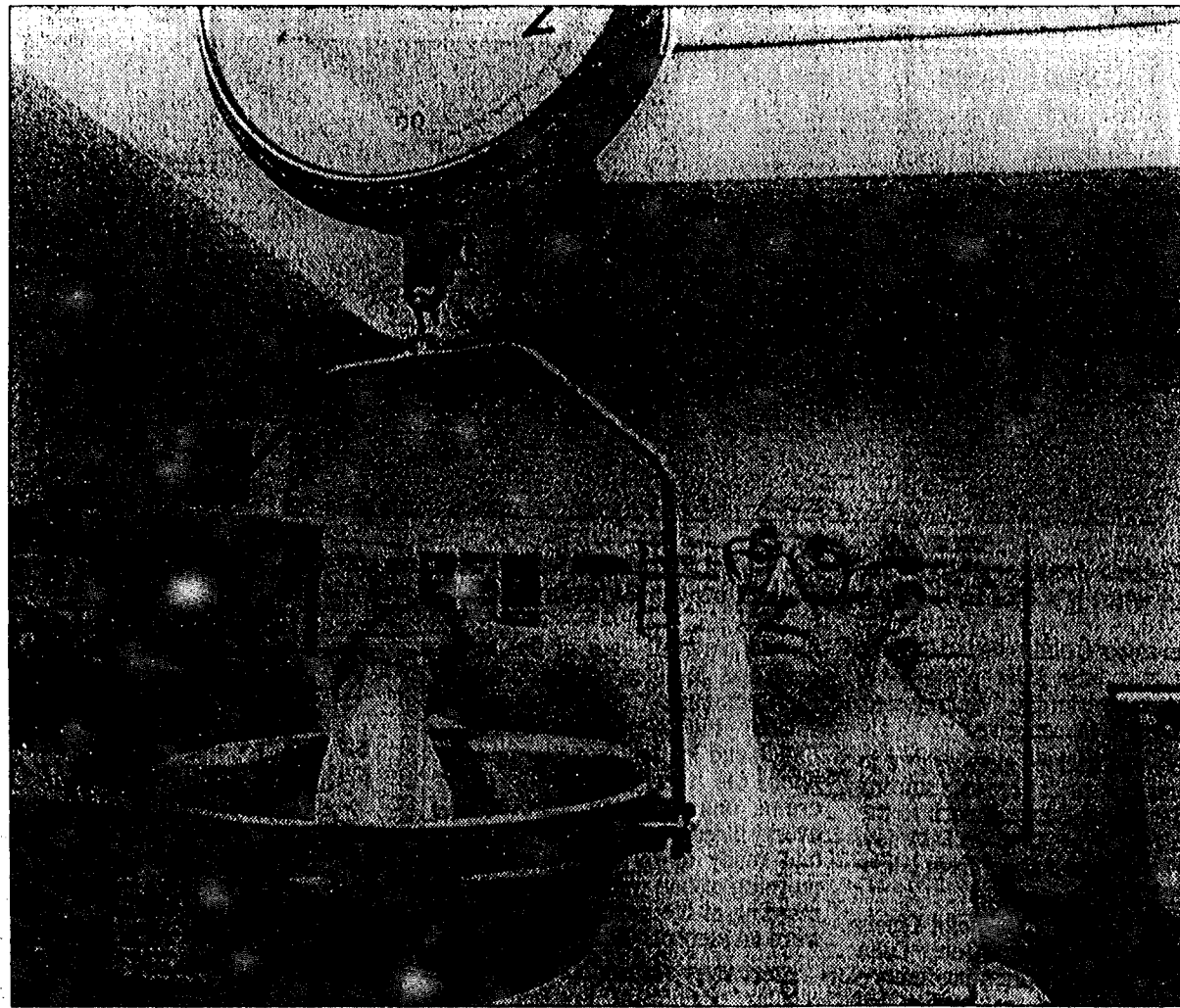
"You always think of the worst," he says. "In this business you're always suspicious."

"You always feel better when you find a note," Cunningham adds.

In Wichita, the bulk of homicide investigations are conducted by detectives during witness interviews and suspect interrogations. But the investigation often starts here, on the stainless steel autopsy table at Diplomat Mortuary Service.

Today, Eckert will have four cases. Besides the gunshot victim there is an elderly woman whose darkening, decaying body was found in a mobile home. There is a teenage drowning victim whose pink, husky body appears to be in perfect health. And there's a drunken driver whose blackened eyes show the effects of a human skull crashing into a windshield at 60 mph.

One by one, the bodies have been delivered to the mortuary service at 901 E. Gilbert in south



Al Schaben/The Wichita Eagle

Eckert weighs an organ, part of the record-keeping detail needed for an autopsy report.

Wichita. Assistants wearing white plastic gloves remove the clothing, wheel the corpses into the autopsy room and wrestle them onto the

flat steel table.

Above the belly of the corpse hangs a microphone that allows pathologists to record oral notes while

working. A white scale — like the one you use to weigh bananas at the grocery store — hangs above the corpse's feet. A small table

placed over the knees gives the pathologist a convenient spot to dissect organs after they've been removed from the body and weighed.

Eckert begins each autopsy with an external examination. He checks for signs of trauma. He counts fingers and toes.

"Sometimes a murderer will take parts as souvenirs," he says.

Aside from the bullet hole, he finds no sign of trauma on the middle-aged man with the bullet wound to the head. During the internal examination, he removes and examines all major organs — the heart, the brain, the liver, lungs and kidneys. None shows any sign of disease.

While Eckert takes a blood sample, Cunningham fingerprints the corpse. When the droning saw is finally turned off, an assistant pulls a beanie-cap-sized piece of skull from the back of the victim's head.

Bullet wounds to the head, Eckert says, can be tricky. He is still intrigued by the case of a man who had no outward signs of injury, yet died of a gunshot wound to the head.

The bullet, found near the back of the skull, is turned over to Cunningham. Eckert sets the brain on the cutting table, and slices it apart to find the path of the bullet. He drops a slice into the formaldehyde and drops the rest into the red plastic bag. He turns his attention to the autopsy report.

Manner of death: "Suicide."

Cause of death: "Massive destruction of brain due to gunshot wound to the head."

Coroner's findings

Only some deaths subject to autopsy

1-7

"Not that I'm aware of," says Pat Cunningham, the detective assigned to the case.

Eckert, the only active forensic pathologist in Kansas, has performed 20,000 autopsies in his 35

eyes show the effects of a bullet skull crashing into a windshield at 60 mph.

One by one, the bodies have been delivered to the mortuary service at 901 E. Gilbert in south

Wichita. Assistants wearing white plastic gloves remove the clothing, wheel the corpses into the autopsy room and wrestle them onto the

flat steel table.

Above the belly of the corpse hangs a microphone that allows pathologists to record oral notes while

working. A white scale — like the one you use to weigh bananas at the grocery store — hangs above the corpse's feet. A small table

to the autopsy report.

Manner of death: "Suicide."

Cause of death: "Massive destruction of brain due to gunshot wound to the head."

Coroner's findings

These are the results of 164 coroner's cases filed since May in Sedgwick County. Autopsies were done in 118 of the cases.

73 Natural deaths

Heart disease: 46
Cancer: 7
Sudden Infant Death Syndrome: 6
Liver failure: 4
Other: 10

51 Accidents

Traffic: 17
Fire: 6
Drug/alcohol overdose: 7
Injuries from tornado: 4
Drowning: 3
Gunshot wound: 3
Other: 10

Source: reports on file in Sedgwick County District Court

21 Suicides

Gunshot wound: 19
Carbon monoxide poisoning: 2

15 Homicides

(Autopsies performed in all 15 cases)

Handgun: 7
Rifle: 3
Shotgun: 2
Knife: 1
Strangulation: 1
Beating: 1

4 Undetermined

(Autopsies in all 4 cases)
Massive head injuries: 3
Hanged: 1

The Wichita Eagle

Only some deaths subject to autopsy

By Hurst Laviana

The Wichita Eagle

If you die in Sedgwick County, there's about a 1-in-10 chance that your body will end up in the custody of the district coroner. And the coroner probably will order an autopsy to determine why you died.

Coroners in Kansas are required by law to investigate all suicides, homicides, fatal accidents and unexplained deaths. If you die in a hospital or nursing home, your doctor probably will sign your death certificate. If you die somewhere else, your body probably will go to the coroner.

If that happens, the coroner will be required to assume custody of your body, make inquiries about the cause of your death, then file a death report with your name on it with the clerk of Sedgwick County District Court.

State law says a coroner must order an autopsy when asked to do so by a county or district attorney. The law mandates autopsies for all children under 1 who are apparent victims of Sudden Infant Death Syndrome. The coroner is legally bound to order an autopsy whenever it will benefit the public interest.

Before May, death reports in Sedgwick County were filed in alphabetical order, making it diffi-

cult to track cases filed during a given time period. Since May, when a new computer system made it possible to file reports in chronological order, 164 death reports have been filed with the county.

Those reports were made up of 15 homicides, 21 suicides, 51 accidents, 73 natural deaths and four deaths in which the cause remains undetermined.

The dead included 17 who were killed in traffic accidents, six who died in fires, three who drowned and four who were killed in the April 26 tornado. There also were four cases of carbon monoxide poisoning and seven involving an accidental overdose of alcohol, cocaine or both.

Autopsies were performed in 118 of the 164 cases, including all cases involving homicide and SIDS.

According to the reports, 105 of the autopsies were performed by Wichita pathologist William Eckert, who has been the main deputy coroner in Sedgwick County since 1967. The 13 other autopsies were performed by Bonita Peterson, a former medical examiner in Jackson County, Mo., who commuted to Wichita from her Kansas City, Mo., home when Eckert was out of town.

Eckert and Peterson are both certified foren-

sic pathologists — specialists in the field of legal medicine. As deputy coroners, they received a nominal salary of \$50 a week, plus \$450 for each autopsy they performed.

District Coroner Robert Daniels, a physician for Boeing, does not perform autopsies. He is paid \$38,861 a year in his part-time job overseeing the coroner's office.

Under Kansas law, local medical societies nominate candidates for coroner, and district judges appoint one of the candidates to a four-year term. In recent years, Daniels has been the only applicant for the job in Sedgwick County.

Deputy coroners must produce written reports to be promptly filed with the coroner and clerk of the District Court. In Wichita, the deputies typically mail their reports to Daniels within 24 hours of completing an autopsy. Daniels reviews the reports, fills out a death report in each case, then files the paperwork with the county court clerk. He usually visits the county courthouse every other week to file the paperwork.

Although "promptly" is not defined by law, a coroner's committee last year suggested that two weeks should be enough time to get reports filed. But of the 164 reports filed since May, only 37 were filed within two weeks of the date of death.

Wilson shooting brought system under scrutiny

By Hurst Laviana

The Wichita Eagle

When Datton Wilson was shot to death by a Haysville police officer on the night of Dec. 7, 1990, the nearest forensic pathologist was more than 100 miles away.

After he was pronounced dead in the St. Joseph Medical Center emergency room, Wilson's body was taken to Wichita Mortuary

out of town on the night of the shooting. David Crane, a clinical pathologist who Daniels said had worked as a deputy coroner several years ago, agreed to perform the autopsy on Wilson.

During the autopsy, performed more than 12 hours after Wilson's death, Crane took blood sample that was later analyzed for alcohol content. Prosecutors said the sample showed that in the hours before Wilson's death, he consumed more than twice the legal limit of alcohol.



8-1



Fernando Salazar/The Wichita Eagle

Connie and Garry Banning had to wait months to see the autopsy report on their baby son, who died in May.

Grieving mother met with red tape

By Hurst Laviana

The Wichita Eagle

Connie Banning's heart was broken on May 16, when her 2-month-old son stopped breathing during his morning nap. Troy died 14 hours later at St. Joseph Medical Center.

Seven weeks after that, Banning's headache was replaced with anger and frustration when she tried to break through a thick blanket of Sedgwick County bureaucracy that kept her from finding out why her son had died.

Her two-day ordeal began in early July, Banning said, when she called District Coroner Robert Daniels to ask for a copy of her son's autopsy report. Daniels, she said, had not seen the report. Banning then called her pediatrician. No report. She called the hospital. No report. The funeral home. The Sedgwick

County Courthouse. No report.

"At one point, I called my husband," Banning said. "I said, 'Nobody has it. I'm afraid they didn't do it.' I thought it was overlooked and didn't get done and I would never know what my son died of."

Kansas law says the district coroner must intervene in every case involving the unexpected death of a child younger than 1 year old. The law, designed to detect child-abuse homicides, requires an autopsy be performed in most cases.

The law also says, "The coroner shall notify the parent or legal guardian of the results of the autopsy as soon as possible after the completion of the autopsy."

In Troy Banning's case, that's not what happened.

Troy's autopsy was performed by pathologist Bonita Peterson at 9 a.m. on May 19 — just 8 hours and 5 minutes

after his death. Peterson concluded that Troy, "a well-developed, well-nourished infant," had died of Sudden Infant Death Syndrome. She filled out her report that day and mailed it to Daniels.

Daniels would eventually file the report with the Sedgwick County District Court clerk's office on July 18. But before the report was filed, Connie Banning spent two days on the telephone trying to track down the report and learning how the system worked.

She finally called Daniels again and asked him to find the report. Daniels, she said, soon found it on his desk. Today, she is bitter about the ordeal.

But she said the experience left her with an even more unsettling question.

"If they handled the report that way," she said, "how did they handle my baby's body?"

After he was pronounced dead in the St. Joseph Medical Center emergency room, Wilson's body was taken to Wichita Mortuary Service, a building that had no coolers to stop decomposition in unembalmed bodies.

When a doctor performed the autopsy the next morning, it marked the first time in at least two years that Sedgwick County did not have a deputy coroner available to perform the procedure in a homicide case.

Although a state law requires coroners to file death reports "promptly," it took more than a month for the paperwork in Wilson's case to reach the Sedgwick County District Court clerk's office.

A grand jury that later looked into the controversial shooting found no basis for criminal charges. But it criticized the local coroner's office by saying, "No one is paying full-time attention to the duties of the office, resulting in a less than satisfactory performance."

If Sedgwick County had been using a full-time medical examiner's office, some officials said, the most controversial aspects of the shooting might have been avoided. Some said the case was, in fact, a worst-case scenario of what can happen when part-time coroners are used to investigate violent deaths.

Everyone involved in the Wilson case agrees that the shooting occurred at 8:09 p.m., after a Haysville police officer was sent to Wilson's home to investigate a reckless driving complaint. Outside the home, Wilson produced an unloaded handgun while confronting the man who filed the complaint. When Wilson pointed the gun at the officer, Haysville police say, the officer shot Wilson twice in the upper chest.

Jerry Berg, a Wichita lawyer who represents Wilson's survivors, said evidence in the case may have been altered by shortcomings in the coroner system.

The first shortcoming, which District Coroner Robert Daniels admits is a serious problem, arose from the office's relying on a single forensic pathologist to conduct autopsies. Daniels' top deputy, William Eckert, was



Wilson

Handling of his death is being called a worst-case scenario

not content. Eckert said the sample showed that in the hours before Wilson's death, he consumed more than twice the legal limit of alcohol.

Berg, however, said the sample was tainted by decomposition that occurred because Wilson's body was left overnight in a heated garage at the mortuary service. Alcohol is a natural by-product of decomposition, Berg said, so the sample was useless.

After the shooting, Berg said, Wilson's family spent days of frustration waiting for the coroner's paperwork to be filed.

"The statute says that report has to be filed promptly and it wasn't filed for a month," Berg said. "We couldn't get insurance proceeds, we couldn't get anything without the death certificate. ... It caused a lot of problems for a lot of people."

Berg said the lack of information from official channels prompted the family to begin its own investigation. While looking for the opinion of a second pathologist, he said, they learned that Eckert was available. He agreed to perform a second autopsy, not in his role as deputy coroner but on the family's behalf.

In the initial accounts of the shooting, Berg said investigators told him Wilson's gun had not been struck by a bullet. He relayed the information to Eckert, who paid close attention to the bullet wounds to the tips of the index and middle fingers of Wilson's right hand.

If Wilson had been holding a gun, Eckert reasoned, the gun would have been damaged by the bullet that struck Wilson's fingers. But as the investigation unfolded, it turned out that the gun had been damaged. Eckert was forced to reverse his initial position and agreed that Wilson was holding the gun.

Grand jurors, looking at the evidence, said they were concerned about a perceived conflict of interest in the case. Eckert, the deputy coroner, was on one side, paid by the Wilson family to perform a second autopsy, and Daniels, the coroner, was on the other side, representing the county.

In Oklahoma, the statewide medical examiner's office uses five full-time forensic pathologists who are not allowed to perform outside work. Eckert, like most forensic pathologists without full-time positions, is allowed to do free-lance work.

Although the conflict raised eyebrows in the grand jury room, Daniels said he doesn't think Eckert's outside work is inappropriate.

"If he wants to, it's all right with me," Daniels said.

The Wichita Eagle

Established 1872
Incorporating The Wichita Beacon
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EDITORIALS

Junk it Coroner system should give way to a statewide medical examiner

As a series of articles in Sunday's Eagle made clear, the Sedgwick County district coroner's office is woefully inadequate to its important task: investigating every unattended or suspicious death that takes place in the county.

If the criminal justice system is to function evenhandedly, it's vital that such investigations be done accurately and thoroughly. It's vital also that relevant paperwork, such as autopsy reports and death certificates, be completed quickly enough to ease the agony of grieving relatives and to allow timely prosecution of criminal cases.

The coroner's office is incapable of meeting these objectives. As William Reals, a forensic pathologist who is vice chancellor of the University of Kansas Medical School/Wichita, told The Eagle: "You need photographers; you need toxicologists; you need lab attendants. We don't have any of that stuff. We don't even have a morgue. We use a mortuary service to do autopsies. We have an archaic system here."

County Coroner Robert Daniels and Deputy Coroner William Eckert contend that critics are exaggerating the office's problems. But as The Eagle investigation showed, there's no shortage of incidents suggesting the local coroner system's inadequacies. Autopsies are sometimes performed in haphazard fashion. Paperwork

frequently takes too long to reach the courts, resulting in the delay of criminal cases. Paperwork frequently contains errors. Bodies awaiting autopsies often are stored in mortuary embalming rooms or hospital hallways, sometimes resulting in decomposition serious enough to cast doubt on the accuracy of the pathologist's findings. And so on.

The answer to this appalling situation is to scrap the coroner's office in favor of a medical-examiner system. Under such a system, now in use in 34 states, full-time forensic pathologists, employed either by counties or the state and equipped with modern, complete facilities, conduct all death investigations.

The best model for Kansas is Oklahoma, which recently abandoned the coroner system for a state medical examiner's office staffed by five forensic pathologists. Coroner Daniels rightly says establishing such a system in Kansas would be costly — forensic pathologists being few in number and commanding high salaries, and the necessary equipment being expensive.

But death investigations are too important to be left to chance. If the Legislature truly wants justice to be done in cases of suspicious death, it should create and finance an organization that's structurally capable of providing it.

Old lesson Science, religion conflict only in narrowest of minds

It smacks of the 1925 Scopes Monkey Trial in Tennessee, but with its own 1990s fundamentalist twist.

John Peloza, a biology teacher at Capistrano Valley (Calif.) High School, is suing his school district for \$5 million. He says school officials are trying to force him into "secular humanism," and are trampling upon his individual rights.

Put simply, Mr. Peloza, a born-again Christian who hands out Bibles after school, wants to counter the teaching of evolution. He's been instructing his students about the intervention of an "intelligent creator" in the affairs of the universe. The Capistrano school district wants him to stop it.

The amount of the suit suggests vindictive motives, but maybe the conflict was inevitable. Many Christians didn't understand in 1925, and they don't understand today, that evolution says nothing about religious beliefs. It is a scientific theory, not fact, and it is taught as such.

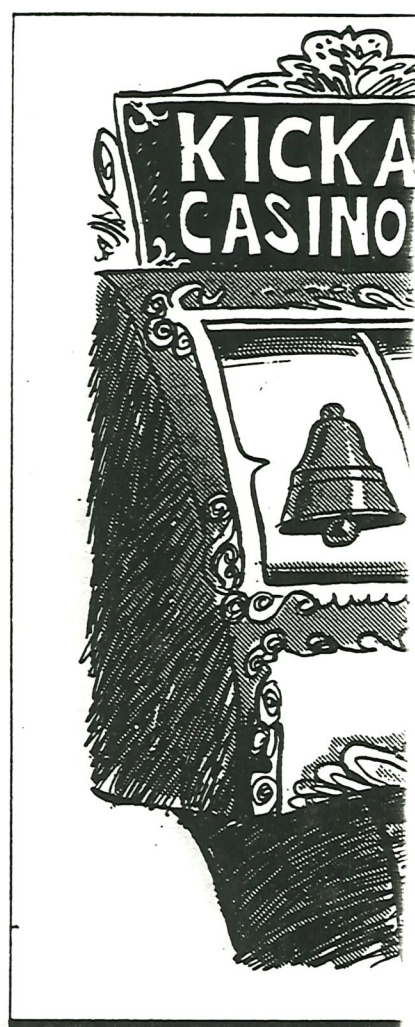
Science and religion conflict only in minds too narrow to accommodate the truths of both. The Capistrano school district is not forcing Mr. Peloza into a state of "secular humanism." The district is merely asking him to stick to the school system's biology curriculum.

It's telling him what it has every right to tell him: Leave the teaching of creationism and other religious beliefs to classes about comparative religion, philosophy and the social sciences, as well as to churches and parents, who may very well have their own ideas about the meaning of the universe.

The tragedy is that Mr. Peloza, who knows quite well what's expected of him as a public school teacher, is doing something very damaging to the children of Capistrano in his zealous pursuit of his right to violate state and local school policy.

His spurious lawsuit could cost hundreds of thousands of dollars to defend — an outrageous waste of money that comes right out of the pot for education.

CROWSON'S W...



PUBLIC FORUM

Dancers ac

People of Wichita, beware! While your attention was diverted to tornado damage repair and issues concerning the school board and abortion, a precious possession of Wichita has been placed on an endangered species list.

Time is running out to save the beauties. If nothing is done by the first of the year, they will be gone. There is a flaw in the genetic makeup of the species, which is considered cause for the Old Cowtown Museum board of trustees and the director of Old Cowtown Museum to unceremoniously throw the Dixie Lee Saloon Girls out of the Fritz Snitzler's Saloon, thus eliminating their charter.

According to the historians, there is no documentation that would place the type of colorful, feathered, dancing women in a saloon in Wichita. Because of this lack of historical documentation, these saloon girls have to go. Apparently, the people providing the direction for Cowtown don't understand the significance of these ladies to the more recent history of the museum.

These women are volunteers, each paying for their costumes out of their own pockets, and the organization has been around for more than 10 years. The Dixie Lee Saloon Girls/Saloon Restoration Organization. They have donated thousands of hours to the museum, and have danced at the museum and at other special events. The thousands of dollars the group has received for these performances have upgraded the saloon, which is located on the museum grounds. What is actually more important than the time, money and effort provided by the ladies is the goodwill they provide for the community and museum. People go to Cowtown and other events to see these costumed ladies kick up their heels and have fun. This fun and excitement is easily transferred to and reflected in the faces of the observers. The fun

Nowcomer

Immigration laws always reflect concern of times

THE CASE AGAINST CORONERS

The system's origins are in colonial times. Its defenders are politically connected. But is this any way to investigate death?

By Jonathan Walters

Sandra Conradi, chief medical examiner for Charleston County, South Carolina, has a file full of botched death investigations. In some cases, basic physical evidence, such as clothing, was not saved; in others, bodies were prematurely embalmed so that holes from gunshot wounds could not be distinguished from holes made by embalming equipment.

The problem, says Conradi, a certified forensic pathologist: Most of those overseeing death investigations in her state are coroners. The job specifications in South Carolina, she notes, are not exactly rigorous. "To be elected coroner, you must be 21 years of age, a resident of the county and a registered voter. That's basically all."

A throwback to pre-Revolutionary War England, the coroner system has exhibited amazing political staying power. As of 1990, according to a study done by the Centers for Disease Control, 11 states were operating under coroner systems, while 17 had mixed coroner and medical examiner systems. Twenty-two states and the District of Columbia had medical examiner systems, in which the lead investigating unit is at least headed by a physician, although that person may or may not have formal training in forensic pathology.

In a few areas, mostly big cities and populous counties, American Medical Association-certified forensic pathologists fill the role of medical examiner. In some very rare instances, board-certified forensic pathologists have been elected coroner.

But in the majority of jurisdictions, death investigation is being headed by someone with little or no rigorous training in the science of forensic pathology—indeed, by someone who is elected from the populace at large with little regard to their qualifications as medical professionals.

"The bottom line is that you have a very uneven system nationwide," says Dr. Michael Baden, a forensic pathologist who for 25 years served as the medical examiner for New York City and now heads the Forensic Sciences Unit for the New York State Police. "More cases get botched than don't get botched."

The most deceptive aspect of death investigation: the seeming obviousness of cause of death. "In most murder cases there's blood coming out of a hole," says Baden, "and coroners

will pick up on that." But beyond that, investigations can get quite complex. Angles of impact, burns, bruises, stomach content, blood toxicology and myriad other bits of potential evidence can mean the difference between manslaughter, homicide, suicide and accident; guilt and innocence; indeed, life in prison or the death sentence for a criminal-case defendant.

Coroners, because of their lack of training, are prone to the "Sherlock Holmes" syndrome, says Dr. Joseph H. Davis, chief medical examiner for Metropolitan Dade County in Florida. They tend to decide unequivocally what caused a person's death based on the obvious, initial evidence. "I've seen people arrested, tried and convicted of murder when there was no murder in the first place," says Davis. There are plenty of times, furthermore, when a homicide is not at all obvious. "In 10 percent of the cases I've seen where a child was beaten to death, there were no visible signs of trauma," says Dr. Vincent DiMaio, medical examiner for San Antonio, Texas.

CORONERS, QUITE NATURALLY, FEEL maligned by their admittedly better-trained compatriots. Their defense runs along two lines. First, they point out, good coroners understand the complexity of death investigations and contract with forensic pathologists to handle autopsies. And coroners who don't perform will be quickly voted out of office. "It really doesn't make a hoot's difference who's sitting in the top chair," says Herbert H. Buzbee, executive secretary-treasurer of the International Association of Coroners and Medical Examiners and an elected coroner in Peoria County, Illinois. "You need a good administrator, then you need quality people to do the examination."



With the coroner system, 'the bottom line is that you have a very uneven system nationwide,' says Dr. Michael Baden of the New York State Police.

Furthermore, coroners are becoming more professional, says Buzbee. Many states now require that coroners receive some training in death investigation. And Buzbee's own association has an annual educational seminar. "The professionalism of death investigation, especially in coroner systems, is improving. It's not just going out and pronouncing death anymore."

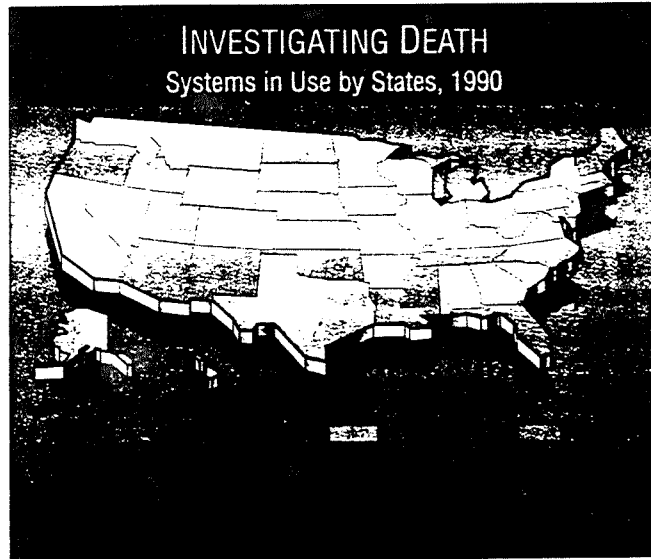
Forensic pathologists agree that a system in which a top-notch coroner runs a death investigation by contracting with a forensic pathologist will indeed result in quality investigations. But, forensic pathologists argue, most coroners are not top-notch, don't usually hire forensic pathologists to handle investigations and have no business whatsoever leading death investigations. Where "funeral directors or tow truck operators" can be coroners, asks Baden, how good can the system be?

Forensic pathologists argue, further, that policy makers should take an increasing interest in death investigation in view of the current clamor for capital punishment and other get-tough sentencing policies.

Adding to the urgency of the matter, says Baden, is the fact that the defense bar has realized the advantages of calling in forensic pathologists to testify. The result, he says, is that quite a few coroners and ill-trained medical examiners have been getting dissected on the witness stand. That is one of the big reasons why the New York State Police in 1985 set up its Forensic Sciences Unit headed by Baden. They were "very frustrated," he says, and wanted to improve the reliability of investigations otherwise being handled at the county level, where the coroner system still predominates.

THE ROUTE TAKEN BY THE NEW York State Police had the advantage of sidestepping the political fight that invariably ensues when shifting statewide from a coroner system to a medical examiner system. Coroners, after all, are major players in county politics, with more power, frequently, than the county sheriff.

In states that have shifted to a medi-



cal examiner system, the change often required pushing by a powerful coalition of interests. While progressive governors or high-profile investigative fumbles have inspired the switch in some places, most often it is the political alliance of doctors and lawyers, notes Dr. Marcella F. Fierro, Virginia's deputy chief medical examiner and a forensic pathologist. That is what happened in Virginia, Fierro says, where the state bar and medical commission hammered out a state medical examiner statute back in 1946. Since then, any body requiring a sophisticated autopsy has gone to Richmond.

But even if policy makers decided tomorrow that death investigation is a high science and ought to be treated as such, much stands in the way of placing forensic pathologists in key positions around the country.

First, establishing a first-rate forensic lab headed by a certified pathologist is costly. While San Antonio medical examiner DiMaio argues that the annual per capita cost of running such a top-notch office is around a dollar, coming up with the initial outlay can be hard. Virginia's Fierro calculates that it cost the state about \$6.5 million to establish its office. She says it costs another \$2.5 million a year to cover the office's investigation into some 500 homicides, 800 suicides and 3,000 deaths by natural causes each year. While such costs may sound high, Fierro adds that the savings in court costs can be considerable too, given that many criminal and civil cases probably would never be brought if

only initial death investigation were handled properly.

Florida addressed the expense issue by spreading the cost of forensic facilities across 24 districts, each of which has a lab. Low-population counties, where the need for a forensic pathologist is infrequent, are part of larger geographic districts and share the cost of the lab. High-population counties, meanwhile, may be districts in and of themselves, with their own labs. Getting adequate funding is still a fight, however, says Davis, shared expenses or not.

Another major stumbling block to professionalizing the field is that there are not enough board-certified forensic pathologists to go around. Those in the field estimate that some 650 forensic pathologists have been certified since 1969, of which only 250 to 300 are currently active.

The dearth of forensic pathologists is not hard to figure. First, to become one, it is necessary to undergo five more years of training after medical school. After that, the pay is relatively poor, running between \$60,000 and \$150,000 a year. And, of course, the work can be pretty unpleasant, as illustrated by one section taken from *Classical Mistakes in Forensic Pathology* by Dr. Alan R. Moritz: "Frequently the reluctance of a pathologist to perform an autopsy on a decomposed body is due to the odor and vermin.... [However,] storage of a decomposed body for 24 hours at near-freezing temperatures will invariably mitigate the odors and tend to immobilize the vermin." The choice between the low-paying career of pathology and the high-paying career of, say, obstetrics becomes a pretty simple one to make.

Given the political nature of the coroner's office, including its traditional role as a springboard to higher office, it is clear that its wholesale replacement is not imminent. But as the stakes in death investigations get higher, what with stiffer sentencing guidelines and the resurgence of the death penalty, there is a growing premium in death investigation, notes Baden, on "getting it right the first time."

1-12

THE CITY OF WICHITA



POLICE DEPARTMENT
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

February 20, 1992

Kansas House of Representatives
House Committee on Local Government
Chairperson Mary Jane Johnson

Chairperson Johnson:

We understand H-B2837 is currently being discussed in committee. We wish to strongly endorse the intent and language provided in this proposed legislation.

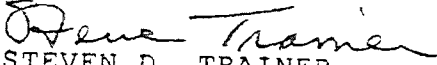
We believe this proposed bill is necessary to facilitate appropriate removal from office, in the most economic and least protracted fashion.

We believe it would be cumbersome and unnecessary to involve another entity, such as the Board of Healing Arts, in a removal process.

The most recent meeting of the Sedgwick County Coroner's Committee produced an overwhelming vote in support of this proposal. The Assistant Sedgwick County Coroner did not oppose the legislation.

Again, we would strongly urge the adoption of this legislation. We appreciate your kind attention in this matter.


Respectfully,


STEVEN D. TRAINER
Deputy Chief
Support Services Bureau

SDT:nh

The University of Kansas Medical Center
School of Medicine-Wichita

Office of the Vice Chancellor

DATE: February 20, 1992
TO: House Committee on Local Government
FROM: William J. Reals, M. D. 
Professor of Pathology
Vice Chancellor
RE: H. B. 2837 and H. B. 3047

I write to strongly support the above noted house bills. Both address a growing need in our state in the pursuit of justice and to investigate sudden and unexplained deaths.

The bill on the coroner, H. B. 2837, better regulates the present system and establishes a district coroner's office in each judicial district of Kansas. The bill details the method of appointing and removing coroners from office and also provides for filling vacancies. It allows the district judge to appoint one or more deputy coroners. It also sets four year terms which may be renewed.

The second bill, H. B. 3047, proposes a state medical examiners board and the appointment of a chief medical examiner. This system is in use in nearby states; for example, Texas and Oklahoma, and provides a statewide system for the investigation of sudden and unexplained deaths.

In the pursuit of justice in our state, the system would provide a better means for forensic pathologists to operate a proper laboratory with the necessary equipment and analytic devices to pursue the cause of the death.

This system has long been needed and I support both bills and will be pleased to respond to any pertinent questions that may arise.

WJR:jm
cc: Representative Elizabeth Baker

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**TESTIMONY OF SHANNON S. KRYSL
BEFORE THE LOCAL GOVERNMENT COMMITTEE**

February 20, 1992

My name is Shannon S. Krysl. I am a civil trial lawyer from Wichita, Kansas. I practice primarily in the areas of personal injury, medical negligence, and legal negligence law.

Autopsies are very important in tort law to both plaintiffs and defendants. They are very important in wrongful death cases to ascertain the cause of death. When autopsies are not performed in a thorough and competent manner, neither side is able to properly investigate, prosecute and/or defend a case.

When a client comes to me about the death of a loved one, it is very important in my investigation to learn whether or not there is a causal connection between the cause of death and the alleged negligence. If the family believes the cause of death is related to medical negligence, then I need a thorough and reliable autopsy to decide whether or not a causal connection exists. For example, if the alleged negligence is inappropriate performance of knee surgery and the patient died of an unrelated heart attack, I need to know whether or not the cause of death is related to the negligence so that the doctor is not needlessly sued and I do not incur needless expense.

In my experience with the Sedgwick County Coroner's Office, autopsies are not thoroughly done and there is a considerable delay in generating reports. The problem, as I see it, is that there are no checks and balances on the system. There are no quality or time reporting controls. In my experience, it can take months and months to get a report

- 05/16/90 Received return call from Deputy Coroner. Deputy Coroner indicated that he was just about ready to submit the report and was waiting on one more thing. Indicated he would release it as soon as possible.
- 10/03/90 Call to the Clerk's Office. Still no autopsy report on file.
- 10/27/90 Received autopsy report.

Luckily, my client did not have a statute of limitations problem, so the nine month delay did not irreparably harm the case. However, I was unable to have an expert look at the matter for nine months while I was waiting on the autopsy report.

In addition, in the same case the coroner diagnosed "severe and diffuse pulmonary congestion, edema and hemorrhage, and active chronic tracheitis." Unfortunately, the coroner failed to order any bacterial or viral studies to determine the cause of these conditions. Therefore, neither side had any way of knowing if the conditions were viral or bacterial in nature. This omission was detrimental to both sides. If the problems were viral, it would have been beneficial to the defendant doctor as the condition would have been untreatable. If the problems had been bacterial, then the condition would have been treatable and beneficial to the plaintiff. Because of an incomplete autopsy, neither side was helped.

Case #2 illustrates a lack of professionalism in the Sedgwick County Coroner's Office among colleagues. My firm represented a family who's child died of what we alleged to be child abuse. An autopsy was performed at the time of death on the child. During the civil trial in November 1990, and in several prior proceedings the deputy coroner, who performed the autopsy, testified on behalf of the plaintiff at trial. Another deputy coroner from the same office who did not perform the autopsy testified for the defense at the trial. The plaintiff ended up winning the case and obtaining a substantial verdict. The jury was very

unimpressed by the "game playing" between professionals from the same office.

While I realize we cannot stop medical professionals from serving as expert witnesses, this kind of professional back stabbing does not serve the interest of justice. This situation further illustrates the fact that there are no standards of conduct for the office and that it is run in a haphazard manner.

Case #3 is also illustrative of problems in the Sedgwick County Coroner's Office. We represent the family of a man who died of a cerebral hemorrhage. He died in March 1990. The autopsy was performed at the time of death. We requested a copy of the autopsy report in August 1990. We received a copy shortly thereafter. The autopsy report indicated that the patient had died of a subdural hematoma secondary to an "abnormality" in the cerebral artery branches. The report also indicated that the heart, kidneys, liver, spleen, bone and corneas had been harvested for transplantation.

The autopsy report was incomplete since the abnormality in the cerebral artery had not been further defined. We needed to know if this abnormality was an aneurysm and its location. We decided to have another pathologist take a look at the tissue slides of the brain. In late June 1991, we made arrangements for the deputy coroner to deliver the tissue to another pathologist. The deputy coroner delivered a canister of tissue to the other pathologist. The canister of tissue, which was delivered, contained a heart and kidneys. Since the heart and kidneys of our client were harvested and had in fact been transplanted into another patient, we knew this tissue could not belong to our client. In early August 1991, the deputy coroner acknowledged that he had delivered the wrong tissue, and that he would in fact deliver the correct tissue. Shortly thereafter on August 26, 1991, we received a detailed report from the same deputy coroner on the brain. The new report indicated that the abnormality was a ruptured berry aneurysm in the posterior communicating artery.

We were very confused at this point in time since we received this report well over a year after we received the first report. We finally decided to have the brain tissue slides sent off to a neuropathologist. The deputy coroner finally agreed. In November 1991, the brain tissue slides were sent to a neuropathologist to see whether or not he could confirm the existence of an aneurysm. He in fact did confirm the existence of an aneurysm in the brain slides and now my investigation is complete.

Unfortunately, there was a lot of additional delay, time and expense invested in a simple cause of death investigation. Had a complete detailed autopsy been performed initially, I would have had the answer I needed. Instead, the deputy coroner delivered the wrong tissue when I attempted to get a second opinion and then generated a second supplemental report. This only clouded the investigation further. Finally, after some very terse communication, it was agreed that a neuropathologist would review the materials.

I do not have any particular axe to grind with any member of the Sedgwick County Coroner's Office. I am here only to provide testimony which I hope will assist this committee in solving the dilemma the courts and litigants now face in my area of the state.

Thank you for listening to my comments.

Phone: 842-2083



J. Alan Sanders, M.D.
Carol A. Moddrell, M.D.
L.W. Price, M.D.
Pathologists

TO: House Local Government Committee
FROM: Carol A. Moddrell, M.D., representing
The Kansas Society of Pathologists *Carol Moddrell MD*
DATE: February 24, 1992
SUBJECT: House Bill 3047; Creation of a State Medical Examiner System

Kansas for many years has utilized the coroner system of death investigation. This requires that each district of one or more counties have available an M.D. or D.O. to assume the responsibility of examining certain dead bodies to determine the manner and cause of death and to sign the death certificates. These dead bodies may be recently deceased or decomposed. They may be in homes, in water, in burned motor vehicles, or anywhere else. Physicians practicing medicine throughout the state of Kansas who assume the role of coroner are, in most cases, not adequately trained for the degree of responsibility given them. Some counties have encountered difficulties in even locating a willing individual. Pathologists such as myself are trained to recognize causes of death and perform autopsies but have very limited exposure to forensic pathology, which is specifically the study of patterns of injuries causing unexpected and violent death.

Coroners are asked to decide if an autopsy is indicated. A pathologist coroner can perform his or her own autopsies. Other coroners have to locate a capable and willing pathologist to do autopsies, and that is a real problem at this time in Kansas. Many pathologists do not want to testify in court and do the tedious evidence gathering required by a complete forensic autopsy.

Coroners throughout the state are independent of each other with no supervision. A coroner in one jurisdiction might order an autopsy in one circumstance, whereas another coroner would not. One of the factors considered in the decision-making process has to be the cost to the county, and another is the logistics of finding a suitable pathologist.

There is no central repository of information on death investigation in Kansas. Reports are filed with the Clerk of the District Court of the jurisdiction in which the death occurred. A person may be injured in Douglas County and transported to Wyandotte County where he dies. The report is then filed in Wyandotte County. A family member or other interested party might want a copy of the report and have difficulty ever finding it.

The coroner system needs to be replaced with a centralized medical examiner system. There should be a chief medical examiner, board certified in forensic pathology, who trains the local medical examiners and is available to perform autopsies for them and assist them in decision-making.

There should be an adequate facility for autopsies to be performed. Mortuaries are utilized in many areas of Kansas. Some have the availability of refrigerated storage, which is mandatory for adequate death investigation. Others are variably lit and ventilated.

The pathologists of Kansas Strongly urge your committee to further investigate the establishment of a State Medical Examiner System in Kansas. I am willing to be a resource person for you should you have additional questions about the current system and why its revision is so desperately needed.

CAM:nr

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2-20-92
attach 3

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILLS NO. 2837 and 3047

The Kansas County and District Attorneys Association appears in support of both House Bill No. 2837 and House Bill No. 3047. While the general crime rate has leveled off, and in some instances, declined, it is clear that the rate of violent crime is ever increasing, leading to an increasing number of homicides that establish new records every year. This is a problem in Shawnee County, and throughout the United States. It is also a problem throughout the State of Kansas, which is the focus of the two bills you have before you. As prosecutors, we are charged with proving the elements of a crime beyond a reasonable doubt. In crime resulting in death, we must rely on medical testimony to establish not only the cause of death, such as a bullet wound, but in many instances, we must also establish the path of the bullet through the victim's body. Of equal importance is the fact that this testimony must come from a person who is able to effectively testify in court, and convey this highly technical information to a judge or jury. At the present time, such testimony is available only through a district coroner, or through contracts with other medical experts who are increasingly unavailable, because of financial or time constraints, to assist in criminal cases. In many counties, no such assistance is available.

At a bare minimum, each county must have available to it a competent pathologist willing to do the work required in medico-legal investigations. That person must be prepared to make difficult decisions, and that person must be willing and able to testify in court and subject himself to the rigors of the legal system.

Our support of HB 2837 should be obvious. In order to obtain the evidence we need, we must have competent coroners who are able to determine the cause and manner of death, and are able to convey this information effectively. The grounds for removal of a coroner in this bill all deal with this issue. A coroner who is incompetent will not be able to determine if a bullet has entered from the front or the rear, and a coroner who is guilty of a felony or other misconduct will not be an effective witness in court.

Our support of HB 3047 is of a more long range approach. Clearly, the establishment of a qualified, independent state medical examiner system will provide a resource not always available throughout the state, but also will provide a system wherein HB 2837 is not needed. A similar system is in place in Oregon, and receives rave reviews not only from our colleagues in Oregon, but from prosecutors in neighboring states as well.

LS
2-20-92
Attach. 4



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TESTIMONY OF
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN
OFFICE OF THE ATTORNEY GENERAL
BEFORE THE HOUSE COMMITTEE ON LOCAL GOVERNMENT
FEBRUARY 20, 1992
RE: HOUSE BILL 2837 & 3047

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the Attorney General's office I would like to thank you for this opportunity to address the committee in support of House Bills 2837 and 3047.

First of all with regard to House Bill 2837, I fail to see any valid reason for objecting to this measure, as it does simply impose standards of professional conduct on a coroner's office, which are sorely needed, and in a method which appears to be able to impose these standards through the judicial system and protect due process.

More importantly I would like to address with you House Bill 3047. In recent weeks, I have been working with a Task Force, which consists on one member of each of the professional law enforcement organizations in the State, those being the Kansas Sheriff's Association, Kansas Peace Officer's Association, Kansas Chief's of Police, Kansas County and District Attorney's Association, as well as the KBI, Kansas Highway Patrol and our

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Attach. 5

office. It was felt unanimously by the group, that an alternative must be found to the antiquated coroner's system we have in our state, as now law enforcement is virtually on its own to get competent assistance regarding expert medical evidence, in the case of suspicious deaths.

I have reviewed House Bill 3047, and feel that it is a workable solution, however have the following suggestions for amendments to the bill:

1. In section 11, it is not clear who has control of the crime scene with regard to the investigation of the crime involved, or in a determination if there is a crime. This should be clarified, so as to give law enforcement absolute control of the crime scene to protect evidence for future litigation. While it is important to give the coroner access to the body itself, this would not carry through to evidence which is needed in the course of the investigation and this matter should be clearly addressed.

2. In section 12, on line 22 this would allow the coroner to take charge of certain evidence if he deemed it relevant in determining the cause of death. I would object to this, and suggest that you have language that would allow the coroner to take charge of any item that is not needed as evidence by law enforcement investigators.

3. In section 13, the bill allows three hours for certain notifications. This needs to be expanded to at least twelve hours.

4. In section 19, the fee allowed to the chief medical examiner's office for an autopsy is set at \$100, which is entirely

too cheap. Shawnee County is presently paying \$400 for autopsies and Sedgwick County \$450, which includes only the pathologist fee. The fee set in new section 19 should be at least \$500.

5. In section 32, the subpoena power given to the medical examiner's office, in line 39 says within the county, I do feel that the subpoena should be valid statewide.

6. In section 35, the medical examiner is given arrest powers. Due to recent litigation nationwide, and restrictions on the immunity given to law enforcement officials, I feel that this should be eliminated, and leave the arrest powers within the hands of trained law enforcement professionals, upon due process as required by court actions. The medical examiner will be an expert in the medical field, not the legal field, and should not be burdened with such a matter.

7. On page 16, in section 43 with regard to investigations involving this in air land and/or water craft, allows for investigations for the death of the operator or person not a passenger in the craft involved, suggest that you allow for investigations involving passengers also.

Again I wish to thank the committee for this opportunity to support the litigation, and would heartily suggest the amendments above and would be more than happy to work with the committee at a later date, to discuss these modifications or any other suggested.



KANSAS MEDICAL SOCIETY

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February 20, 1992

TO: House Local Government Committee
FROM: Kansas Medical Society *Chip W. Steeler*
SUBJECT: House Bill 2837; Removal from Office of District Coroners

While we can agree that any district coroner who is convicted of a felony, or fails to perform their statutory duties should be removed from office, there are two criteria for removal in HB 2837 that are unacceptable. "Misconduct in office" and "incompetence" are entirely subjective and could easily be construed to mean a number of different things, such as inability to adhere to pressures of local politics. We believe that it is extremely important to maintain the autonomy and objectivity of the office of District Coroner in order to assure that criminal investigations are conducted in an appropriate fashion.

There is however, an established method whereby a physician may be judged as to competence and professionalism. These criteria are spelled out at great length in the Healing Arts Act. Under that law, physicians are guaranteed due process rights, and the benefit of being judged by a body which consists of peers who are acquainted with standards of medical practice, as well as public members and members of other professions. We have attached to this statement a copy of an amendment to HB 2837 that we believe would make it acceptable. Otherwise, we must ask you to report HB 2837 adversely.

Thank you for the opportunity to testify, and for considering our concerns.

LL
2-20-92
Attach. 6

HOUSE BILL No. 2837

By Committee on Federal and State Affairs

1-31

8 AN ACT concerning district coroners; relating to removal from office;
9 amending K.S.A. 22a-226 and repealing the existing section.
10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 22a-226 is hereby amended to read as follows:
13 22a-226. (a) There is hereby established the office of district coroner
14 in each judicial district of the state. The district coroner shall be a
15 resident of the state of Kansas licensed to practice medicine and
16 surgery by the state board of healing arts or shall be a resident of
17 a military or other federal enclave within the state and shall be duly
18 licensed to practice medicine and surgery within such enclave.

19 (b) The local medical society or societies in each judicial district
20 shall nominate one or more candidates for the office of district cor-
21 oner and submit the names of the persons so nominated to the
22 administrative judge of the judicial district on or before January 1,
23 1981, and every four years thereafter. The administrative judge and
24 district judges of the judicial district shall appoint a district coroner
25 for the district. The appointee may be one of the persons nominated
26 or some other qualified person.

27 (c) *Except as otherwise provided in this section,* the district cor-
28 oner shall serve for a term of four years, which term shall begin on
29 the second Monday in January of the year in which such coroner is
30 appointed, and such coroner's compensation shall be as provided by
31 law. *The district coroner may be removed from office by the ad-*
32 *ministrative judge and district judges of the judicial district upon a*
33 *finding that one or more of the following grounds exist: Conviction*
34 *of a felony; ~~misconduct in office; incompetence; failure to perform~~*
35 *duties prescribed by law. Vacancies in the office of district coroner,*
36 *including vacancies resulting from removal from office under this*
37 *subsection, shall be filled in the same manner as appointments for*
38 *regular terms of district coroner. Such an appointment shall be for*
39 *the remainder of the regular term and shall be effective from the*
40 *date the coroner is appointed and is otherwise qualified for the office.*

41 (d) The coroner shall, before entering upon the duties of the
42 office, take and subscribe an oath or affirmation that such coroner
43 will faithfully, impartially and to the best of the coroner's skill and



KANSAS MEDICAL SOCIETY

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Chip Wheelen
Director of Public Affairs

suspension or revocation of the district coroner's
license to practice medicine and surgery in this
state;

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