

DO NOT RESUSCITATE: THE FIGHT TO REVIVE INQUEST PROCEEDINGS IN THE UNITED STATES

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INTRODUCTION

Seattle police fatally shot Charleena Lyles, a Black, pregnant woman, on June 18, 2017.¹ Law enforcement knew Ms. Lyles from previous mental health and domestic violence incidents.² To date, the courts have never heard her story nor have prosecutors charged anyone for her death.³ In Seattle’s King County, however, the courts are not the only avenue to investigate the circumstances surrounding fatal police shootings.⁴ Officials in King County and counties across twenty-eight states use a separate investigatory process to answer the question “what happened?” when a death occurs under suspicious circumstances.⁵ This process is known as an inquest.⁶

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1. Sara Jean Green, *Hundreds Gather to Remember Charleena Lyles, a Black Woman Killed by Seattle Police in 2017, amid Growing Movement Against Police Violence*, SEATTLE TIMES (June 19, 2020), <https://www.seattletimes.com/seattle-news/hundreds-gather-to-remember-charleena-lyles-a-black-woman-killed-by-seattle-police-in-2017-amid-growing-movement-against-police-violence/> [<https://perma.cc/ABC5-QTCA>].

2. Steve Miletich, *Charleena Lyles had Long Turned to Seattle Police for Help Before Fatal Confrontation*, SEATTLE TIMES (Aug. 27, 2017), <https://www.seattletimes.com/seattle-news/crime/charleena-lyles-had-long-turned-to-seattle-police-for-help-before-fatal-confrontation/> [<https://perma.cc/AX7K-K933>].

3. See Green, *supra* note 1.

4. See KING COUNTY, WASH., CHARTER Art. 8, § 895 (2019), https://aqua.kingcounty.gov/council/clerk/code/03_Charter.pdf [<https://perma.cc/4VGF-XNYG>].

5. See *Death Investigation Systems*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated Jan. 15, 2015), <https://www.cdc.gov/php/publications/coroner/death.html> [<https://perma.cc/3BYW-PBL5>] (identifying fourteen states with county-, district-, or parish- based coroner systems and fourteen states with mixture of county-based coroner systems and county-based medical examiner offices); see 18 C.J.S. Coroners §§ 10–11 (2019) (defining inquests).

6. An inquest is “[a]n inquiry by a coroner or medical examiner, sometimes with the aid of a jury, into the manner of death of a person who has died under suspicious circumstances, or who has died in prison.” *Inquest*, BLACK’S LAW DICTIONARY (11th ed. 2019). See also 18 C.J.S. Coroners §§ 10–11 (2019). Today, inquests are a part of the medicolegal death investigation process, that is the combination of medicine and law to understand the cause and circumstances of an individual’s death.

An inquest is a fact-based proceeding conducted by a coroner, medical examiner, or other official to determine the decedent's identity, the decedent's cause of death, and the identities of possible responsible parties.⁷ Inquests range from non-judicial to equivocally judicial proceedings, depending on the jurisdiction.⁸ Inquests differ in many significant ways from trial proceedings. First, the rules of evidence often do not apply in inquests.⁹ Unlike the rigid approach to introducing evidence at trial, inquests' fact-finding purpose promotes the broad discovery of evidence.¹⁰ Despite this procedural shortcut, many states permit parties to enter inquest testimony as evidence at trial.¹¹ Second, unlike trial proceedings, which permit the accused to have attorney representation, inquests may not allow witnesses accused of causing the death to have such representation.¹²

7. 18 C.J.S. Coroners §§ 10–11 (2019). This Note will refer to two death investigation positions—the coroner and the medical examiner. The coroner is an elected official who conducts inquiries into individual deaths. Carl Parrott, *Advantages and Disadvantages of the Coroner System*, in COMMITTEE FOR THE WORKSHOP ON THE MEDICOLEGAL DEATH INVESTIGATION SYSTEM, MEDICOLEGAL DEATH INVESTIGATION SYSTEM: WORKSHOP SUMMARY 25 (2003). Local statutes often do not require coroners have any specific medical or legal training. *Id.* The medical examiner is an appointed official who local statutes require have medical training, often including specific training in forensic pathology (the study of the causes of death). *Id.*; Sandra Bartlett, *Coroners Don't Need Degrees To Determine Death*, NPR (Feb. 2, 2011), <https://www.npr.org/2011/02/02/133403760/coroners-dont-need-degrees-to-determine-death> [<https://perma.cc/8AGZ-SYPH>].

8. 18 C.J.S. Coroners § 11 (2019); see *In re Death of Boston*, 112 Wash. App. 114, 118, 121 (2002) (holding a defendant could not appeal an inquest verdict to superior court since the inquest determination was not “a final decision of a court”).

9. Paul MacMahon, *The Inquest and the Virtues of Soft Adjudication*, 33 YALE L. & POL'Y REV. 275, 292 (2015). MacMahon notes dispensing with restrictive evidence rules allows an open inquiry into the circumstances surrounding a death. *Id.* Moreover, inquests' unstructured nature permits the inquest verdict to hold entities accountable for deaths where adjudication would otherwise be unable to attribute such accountability. *Id.* at 292–93.

10. *Id.* at 291 n.90 (citing *R v. City of London Coroner, ex parte Barber*, [1988] Q.B. 467); see also LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES, 1867–1973* 182 (1997).

11. See, e.g., *People v. Murdock*, 39 Ill. 2d 553, 558 (1968) (holding defendant's inquest testimony was admissible at trial although defendant did not have representation at the inquest and was entitled to have representation); *contra* *People v. Mondon*, 103 N.Y. 211, 220–21 (App. Ct. 1886) (holding failure to advise defendant of his rights at the inquest prevented the prosecution from admitting the defendant's testimony at trial).

12. See Catholic University Law Review, *Constitutional Rights at Inquest Proceedings: The Kennedy Challenge*, 19 CATH. U. L. REV. 227, 232 (1969). Although originally cited in 1969, Wisconsin continues to permit counsel for any witness, although “the counsel may not examine or cross-examine his or her client, cross-examine or call other witnesses or argue before the judge or circuit court commissioner holding the inquest.” WIS. STAT. § 979.06(3) (2019). Illinois also continues to require that “any witness appearing at the inquest shall have the right to be represented by counsel.” 55 ILL. COMP. STAT. 5/3-3030 (2019). South Carolina, on the other hand, does not permit representation for

Finally, and importantly, inquest verdicts are nonbinding on other executive and judicial bodies.¹³ Regardless of the inquest determination, the prosecutor may choose to bring charges against a suspect implicated in an inquest proceeding.¹⁴

Inquests are a function of the executive branch and are traditionally focused on information-gathering—understanding what happened to the decedent.¹⁵ But some jurisdictions amend the inquest process to better protect an accused’s due process rights.¹⁶ Still, other community advocates support changing inquests to promote trust and transparency in the criminal justice system.¹⁷ This Note argues more states should adopt inquest proceedings that balance the decedent’s family’s interest in understanding what happened against the accused’s due process rights. This Note cautions against emulating the adversarial trial-like proceedings of traditional criminal litigation. The inquest process requires realistic boundaries to prevent it from wading too far into adjudication; these boundaries focus on discerning when the loss of due process rights for the accused outweighs the fact-finding benefits afforded by inquests.

Part I of the Note explores the common law roots of the inquest system and how inquests continue to pervade the adversarial American court system. It examines the different ways American jurisdictions adapted the inquest system to balance the interests of the decedent’s family and the accused. Part II analyzes how jurisdictions with different types of inquest systems and jurisdictions without inquest systems in the United States balance the decedent’s family’s interest in justice and closure in grieving, the accused’s interests in preserving their constitutional rights, and the public’s interest in justice for the decedent, fairness for the accused, and the assurance of public safety and health. Part III proposes a hybrid

suspects at inquest proceedings. Marshall Crane, *Coroner’s Inquest in South Carolina: A Unique, Impartial, and Public Opportunity to Seek Justice*, 66 S.C.L. REV. 785, 788 (2015).

13. See *In re Death of Boston*, 112 Wash. App. at 121.

14. MacMahon, *supra* note 9, at 298; see *In re Death of Boston*, 112 Wash. App. at 118; H. Morley Swingle, *Coroner’s Inquests in Missouri: Modern Usage of the Hue and Cry*, 63 J. MO. B. 80, 81 (2007).

15. Crane, *supra*, note 12, at 787.

16. See, e.g., Michael J. Gayan, *Judge Dredd: Hollywood Fiction or Las Vegas Reality?*, 8 NEV. L.J. 698, 720 (2008).

17. Seattle Community Police Commission, *Key Changes Needed to the Inquest Process*, SEATTLE.GOV (Mar. 2, 2018), https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/Key_Changes_Needed_to_the_Inquest_Process.pdf [https://perma.cc/HUS9-F7GN].

restructuring of inquest proceedings that would ensure adequate due process rights for both the decedent's family and the accused, while bolstering the open, fact-finding principles of an inquisitorial system to the benefit of all parties.

I. THE ORIGINS OF INQUESTS

A. The Origins of Inquest Proceedings in England to Benefit the King and Crown: 1066-1700s

William the Conqueror introduced inquests in England to accurately record his subjects' present financial assets, not to investigate deaths.¹⁸ Under royal authority, the state compelled witnesses to testify about the land and livestock in the region.¹⁹ In turn, a jury determined by unanimous vote the terms of the asset in question.²⁰ In medieval England, inquests referred to any jury proceeding, not exclusively death investigations.²¹ After William the Conqueror took control of England, the Crown centralized and expanded its power. The Crown installed coroners within communities to oversee the administration of criminal justice for the cases within the Crown's jurisdiction.²² Coroners were required to conduct inquests when a person died "unnaturally, suddenly or in prison, or . . . [under] suspicious circumstances."²³ The "first finder" of the decedent's body was required to "raise the hue and cry" and notify the coroner of the death.²⁴ The inquest juries comprised of persons from the town in which the decedent was found or died and persons from the four nearest towns.²⁵ Juries ranged from twelve to twenty-four members to maximize representation from the surrounding towns.²⁶ Coroners also gathered local jurors who knew the community.²⁷

18. A.T. CARTER, A HISTORY OF THE ENGLISH COURTS 11 (7th ed. 1944).

19. *Id.*

20. *Id.* at 12–13. From this information, William the Conqueror could levy taxes against these assets. ADOLPHUS BALLARD, THE DOMESDAY INQUEST 11 (1906).

21. Charles Gross, *The Early History and Influence of the Office of Coroner*, 7 POL. SCI. Q. 656, 667–68 (1892).

22. *Id.* at 659.

23. R.F. HUNNISETT, THE MEDIEVAL CORONER 9 (1961).

24. *Id.* at 10.

25. *Id.* at 15.

26. Gross, *supra* note 21. See also HUNNISETT, *supra* note 23, at 13–15.

27. MacMahon *supra* note 9, at 280; see also Nicholas Rheinberg, *Investigating Sudden Death: The Role of the Coroner*, GAZETTE, <https://www.thegazette.co.uk/all-notices/content/101198>

Over time, the medieval inquest process shifted to maximize the state's ability to obtain money and chattel. The coroner compelled parties to attend pending inquest proceedings by fining those who failed to appear.²⁸ Among those required to attend were the whole household where a death or fatal injury occurred, all witnesses to the death, everyone who stayed in the same residence of the accused the night before the death, and anyone who moved the body.²⁹ In turn, the coroner could fine these individuals if they did not "raise[] the hue and cry after the felon and done their best to arrest him."³⁰ The coroner automatically compelled the "first finder" who discovered the decedent, the four neighbors residing closest to where the decedent was found, and the decedent's family to attend the inquest.³¹

Although compelling attendance through fines helped secure witnesses and suspects, the substantial sum the state stood to acquire when compelled individuals failed to appear at the inquest largely motivated this financial scheme.³² Despite these conflicts, the public viewed coroners as independent and less susceptible to partiality,³³ and less likely to use their power to extort the people.³⁴ But medieval coroners dabbled in corruption.³⁵ Coroners often required payment to initiate inquests, stole decedent's clothes, and purposely under-valued criminals' property to retain the excess funds.³⁶

Beginning in the medieval era and continuing into the eighteenth century, this profit-motivated inquest procedure carried over to inquests into prison deaths. The state compelled coroners, operating under the auspices of the Crown, to investigate the deaths of prisoners.³⁷ If the coroner

[<https://perma.cc/KPW5-DQH2>] (last visited Mar. 3, 2021).

28. See HUNNISETT, *supra* note 23, at 23. Hunnissett refers to this process as "attachment" meaning "to arrest or . . . to secure by means of sureties for future attendance in court." *Id.* at 201.

29. *Id.* at 23–24.

30. *Id.* at 24.

31. *Id.* at 24–25. The coroner only compelled family to attend if the decedent was English. *See id.* at 24.

32. *Id.* at 26.

33. *Id.* at 87. See IAN A. BURNEY, BODIES OF EVIDENCE: MEDICINE AND THE POLITICS OF THE ENGLISH INQUEST 1830–1926, at 27 (2000) (noting how commentator William Cobbett eschewed "local county authorities, magistrates and the sheriff" for their corruption and lack of independence, and lauded "the popularly elected coroner and his jury of local men good and true" as an effective mechanism of inquiry).

34. HUNNISETT, *supra* note 23, at 118.

35. *Id.* at 120.

36. *Id.* at 122.

37. *Id.* at 35.

determined that the prison official “hastened death by harsh custody or pain inflicted on the prisoner,” the coroner arrested the prison official for homicide.³⁸ But coroners regarded prisoner deaths from unsanitary prison conditions, hunger, and thirst as natural and declined to arrest prison officials in these circumstances.³⁹ Although later construed to protect prisoner’s rights, inquests into prison deaths originally served the king’s financial interests.⁴⁰ The king had an interest in preventing prisoners’ deaths because these deaths deprived the Crown of any future profit derived from convicting and fining the prisoner.⁴¹ Moreover, a death in the king’s realm, not to mention a death in prison, within the king’s custody, undermined the king’s power.⁴² Thus inquests and medieval coroners upheld the Crown’s sovereignty.⁴³

*B. The Rise and Fall of Inquests in the United States:
From 1624 to Present*

The coroner system in pre-Revolutionary War America mimicked the English system.⁴⁴ As coroners’ prominence declined in England, it grew in the American colonies.⁴⁵ There, the leading law enforcement official would convene an inquest upon receiving the coroner’s request for further investigation into a violent or untimely death.⁴⁶ As representatives of the king, colonial coroners could take possession of all the decedent’s goods and property if the decedent was a convicted felon or had died unnaturally, such as from murder or suicide.⁴⁷ Free, white, property-owning men served

38. *Id.*

39. *Id.* at 36.

40. BURNEY, *supra* note 33, at 25 & 183 n.29 (2000).

41. *Id.* at 25.

42. *Id.* at 24–25.

43. *See id.* Notably, centuries later, elected officials used inquests to investigate transgressions by the state. *Id.* at 40. For instance, the public elected one nineteenth century official who revived inquests and launched an investigation into workhouses. *Id.* at 41–42. The official relied on inquests’ historic use to investigate prison deaths to champion using inquests to cure modern society ills. *Id.*

44. JEFFREY M. JENTZEN, DEATH INVESTIGATION IN AMERICA: CORONERS, MEDICAL EXAMINERS, AND THE PURSUIT OF MEDICAL CERTAINTY 11 (2009).

45. *Id.* at 10. Jentzen reasons the “lack of governmental officials and an evolving democratic political structure” allowed coroners to rise to prominence in colonial America, while the increasing role of judicial figures in England undermined coroners’ stature. *Id.*

46. *Id.* at 11.

47. *Id.* at 14–15.

on the inquest jury and convened at the site where the body was discovered to observe the evidence.⁴⁸ Coroners conducted inquests into the deaths of slaves or indentured servants, even if the master was the accused killer.⁴⁹

Following the Revolutionary War, early state governments who controlled criminal disputes drew from English common law and formally adopted the position of coroner into their state constitutions.⁵⁰ Subsequently, coroners were popularly elected rather than appointed and thus took on a distinctly political characterization.⁵¹ Previously, medical professionals were not readily involved in inquest proceedings.⁵² Now, coroners exercised subpoena power over physicians, but often opted to form their own conclusions rather than entertain the findings of poorly trained doctors.⁵³ In the nineteenth century, medical professionals protested coroners' large role in death investigations and advocated for a greater role for autopsies and medical insight in determining the cause of death.⁵⁴

At the turn of the twentieth century, government officials capitalized on inquests' public nature.⁵⁵ Inquest proceedings informed the public about the details of controversial cases.⁵⁶ Also, by publicly ruling a death was justified or accidental, inquests helped insulate the prosecutor's decision to not charge the accused.⁵⁷ Inquests allowed officials to inform communities

48. *Id.* at 11. Like the inquest juries in medieval England, the inquest jury in colonial America observed the body and determined the cause of death based on the evidence presented. *Id.* at 11–12. Jurors would consider their own observations, popular beliefs, and rudimentary medical tests. *Id.* at 12.

49. *Id.* at 15. Northern colonies considered slave killings within common law homicide, although these colonies only prosecuted two slave masters for homicide, and both escaped before facing execution. ANDREW T. FEDE, JUSTIFIED HOMICIDE: THE LEGALITY OF KILLING SLAVES IN THE UNITED STATES AND THE ATLANTIC WORLD 68 (2017).

50. JENTZEN, *supra* note 44, at 17–18. States drew the principle of death investigation as a duty of local coroners' offices from English tradition. See, for example, Jesse M. Carr, *The Coroner and the Common Law*, 92 *Calif. Medicine* 426 (1960), describing the elements of English common law in California's statute establishing the coroner's office.

51. JENTZEN, *supra* note 44, at 17–18.

52. *Id.* at 13. Individuals viewed the coroner position as a "stepping-stone" to entering politics. *Id.* at 18. Coroners often lacked any formal legal or medical qualifications. *Id.*

53. *Id.*

54. *Id.* at 19–20.

55. *Id.* at 21.

56. See Swingle, *supra* note 14.

57. Swingle, *supra* note 14. The extent to which coroner's inquests are public varies. See, e.g., *Glasgow School District v. Howard County Coroner*, 572 S.W.3d 543, 545 (Mo. App. Ct. 2019) (wherein the coroner refused to release the inquest transcript to the school district following a student's suicide from apparent harassment); but see, e.g. KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-4-EO (2020), https://www.kingcounty.gov/~media/operations/policies/documents/PHL_7_1_4_EO_Inquest.ashx?la

about public health hazards and dangers to public safety.⁵⁸ Some coroners also investigated workplace deaths, helping to raise awareness about common workplace injuries and fatalities.⁵⁹ Consistent with coroners involvement in common social issues of the day, inquests at this time also focused on women's deaths from illegal abortions.⁶⁰ Thus, the American coroner, like the English coroner of the nineteenth century took on an important role in investigating and informing the public about various social ills.

C. Approaches to Inquest Reform in the United States

How is it that a procedure used by the state to amass constituent's money and property, disregard medical evidence, and shame women persists in United States jurisdictions? Inquests are rarer in the United States today.⁶¹ The few jurisdictions that maintain inquest proceedings have modified the process to enhance decedents' families' voices, protect suspects' due process rights, and leverage inquest procedures to address public concerns about transparency, particularly as inquests relate to police shootings.

=en [<https://perma.cc/B28K-2F6M>] (requiring King County officials in Washington state upload inquest proceedings to the County's website when possible). The benefit of inquests at assuaging public concern continues into the twenty-first century. See, e.g., Abby Goodnough, *A Suicide or a Lynching? Answers Sought in Florida*, N.Y. TIMES, (July 29, 2003), <https://www.nytimes.com/2003/07/29/us/a-suicide-or-a-lynching-answers-sought-in-florida.html> [<https://perma.cc/69V3-2TNG>] (amid rumors of lynching, the judge ordered the first inquest in eighteen years into a black man's alleged suicide in Florida).

58. JENTZEN, *supra* note 44 at 136–37, 140.

59. *Id.* at 139. By investigating workplace deaths, coroners' files served as important evidence in labor activists' efforts to combat unhealthy and dangerous workplaces. *Id.*

60. REAGAN, *supra* note 10, at 22. If one suspected abortion caused a woman's death, the coroner would proceed with an inquest laying out all the collected facts and witness testimony. *Id.* at 118. Far from determining the woman's cause of death, the coroner's inquest "generally determined whether anyone would be criminally prosecuted" for the woman's death, namely the individual who performed the abortion and those who assisted her in obtaining the abortion. *Id.* at 119. The inquest jury could order the police hold those suspected of assisting in the woman's abortion and "[b]oth prosecutors and the grand jury tended to follow the findings of the coroner's jury." *Id.* The public nature of coroner's inquests pressured physicians attending to women suffering from the complications of an illegal abortion to report their patient to law enforcement or the coroner, fearing criminal investigation themselves or reputational harm. *Id.* at 120–21. Physicians were encouraged to obtain statements from dying women naming their abortionist to absolve the physicians of liability. *Id.* at 121–24. During inquests, administrators questioned female family members and friends about the decedent's sexual history and behavior and intimate details about how the decedent procured an abortion, in violation of the customs and cultural expectations at the time. *Id.* at 127. Moreover, women's partners faced jail time while awaiting their inquest testimony. *Id.* at 129.

61. See MacMahon, *supra* note 9; *Death Investigation Systems*, *supra* note 5.

*1. States without Inquests: The Medical Examiner Approach to
Medicolegal Investigation*

In states without inquests or coroner's offices, states have either (1) centralized state medical examiner offices or (2) county- or district-based medical examiner offices.⁶² In both instances, medical examiners investigate deaths that occur under unnatural or violent circumstances.⁶³ Unlike coroners, medical examiners are often medical professionals,⁶⁴ and they are frequently appointed to their position rather than elected.⁶⁵ As medical professionals, medical examiners investigate deaths by performing autopsies and recording their findings.⁶⁶ The medical examiner shares their findings with the prosecuting attorney.⁶⁷ After reviewing the medical examiner's findings, the prosecuting attorney decides whether there is probable cause to bring a case against the accused.⁶⁸ If so, the prosecuting attorney may present the case to the grand jury for a formal indictment or pursue a preliminary hearing.⁶⁹ The prosecutor can call the medical

62. RANDY HANZLICK, *DEATH INVESTIGATIONS: SYSTEMS AND PROCEDURES* 20 (2006); *See also Death Investigation Systems*, *supra* note 5. The CDC recorded fifteen states with county-based mixture of medical examiner and coroner offices. *Id.*

63. HANZLICK, *supra* note 62 at 85–86; *See, e.g.*, MD. CODE ANN., HEALTH–GEN. § 5-309(a) (West 2019) (centralized state medical examiner office); ARIZ. REV. STAT. ANN. § 11-593(B) (2019) (county-based medical examiner offices).

64. Parrott, *supra* note 7. That is not to say that no coroners are medical professionals nor that all medical examiners are medical professionals. For an overview coroner and medical examiner training requirements by state, see CDC, CORONER TRAINING REQUIREMENTS (2015) <https://www.cdc.gov/php/publications/coroner/training.html> [<https://perma.cc/4DEP-AM4K>].

65. Parrott, *supra* note 7, at 85–86; HANZLICK, *supra* note 62, at 19–20.

66. Ron M. Aryel, et al., *Coroners and Medical Examiners*, in *HANDBOOK OF BIOSURVEILLANCE* 179 (Michael M. Wagner, Andrew W. Moore, & Ron M. Aryel eds., 2006). Autopsies are postmortem surgical examinations to determine the causes and circumstances of death. *Autopsy 101*, PBS FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/post-mortem/things-to-know/autopsy-101.html> [<https://perma.cc/6EV3-LSUQ>] (last visited Mar. 4, 2020). This differs from coroners who have doctors perform the autopsies, but the coroner completes the death record regarding the cause. A.C. Thompson, *How to Investigate Coroners and Medical Examiners*, PROPUBLICA (Sept. 2, 2011), <https://www.propublica.org/getinvolved/how-to-investigate-coroners-and-medical-examiners> [<https://perma.cc/RPL3-6KGG>].

67. HANZLICK, *supra* note 62, at 78; *see* Crane, *supra* note 12, at 785.

68. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (“In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”).

69. *See* Roger A. Fairfax, Jr., *The Grand Jury's Role in the Prosecution of Unjustified Police Killings—Challenges and Solutions*, 52 HARV. C.R.–C.L. L. REV. 397, 399 (2017).

examiner to testify before the grand jury or judge about their cause of death findings.⁷⁰ Prosecutors rely on the medical expertise of these testimonies, but testimonies can vary widely.⁷¹

2. States with Inquests: Sustaining and Reforming the County-Based Coroner System

Fourteen states have a county-based coroner system, and fourteen more states have a mixture of county-based coroner systems and medical examiner offices.⁷² Counties in Montana, Nevada, and Washington continue to use the coroner inquest system in varying ways.⁷³

Montana counties face growing pressure to change their inquest proceedings for officer-involved fatalities.⁷⁴ Yellowstone County, Montana's largest county, exemplifies one jurisdiction that has not reformed its local inquest procedures.⁷⁵ In Yellowstone County, the county attorney has sole discretion to request the coroner initiate an inquest proceeding,

70. *Id.*

71. JENTZEN, *supra* note 44, at 205 (explaining how deficient medical testimony standards leads the legal community to question “[h]ow can two board-certified forensic pathologists come up with totally opposite opinions on the same case?”). Jurors may also experience difficulty weighing the expert testimony. *See generally* Emily Leebron Foster, *Anchoring and the Expert Witness Testimony: Do Countervailing Forces Offset Anchoring Effects of Expert Witness Testimony?*, 77 TENN. L. REV. 623, 637 (2010); Sanja Kutnjak Ivkovic et al., *Jurors' Evaluations of Expert Testimony: Judging the Messenger and the Message*, 28 LAW & SOC. INQUIRY 441 (2003).

72. *Death Investigation Systems*, *supra* note 5. Generally, states with a mixture of county-based coroner systems and medical examiners offices permit populous counties to elect a medical examiner or maintain a coroner system. *See, e.g.*, Swingle *supra* note 14, at 80 (citing MO. REV. STAT. § 58.700 (2002)); WASH. REV. CODE § 36.24.190 (2021).

73. Each locality that employs the inquest system adheres to its own laws, policies, and procedures. This analysis focuses on Yellowstone County, Montana, Clark County, Nevada, and King County, Washington as case studies because of recent developments within those jurisdictions to reform the inquest system. These counties exemplify three of many possible manifestations of the inquest system in the United States.

74. *See* Jack Healy, *A More Public Option for Investigating Shootings by Police Officers*, N.Y. TIMES (Mar. 17, 2015), <https://www.nytimes.com/2015/03/18/us/a-more-public-option-for-investigating-shootings-by-police-officers.html> [<https://perma.cc/L453-YTKS>]; *Gazette Opinion: Updating a System that Could be Even Better*, BILLINGS GAZETTE (July 14, 2019), https://billingsgazette.com/opinion/editorial/gazette-opinion-updating-a-system-that-could-be-even-better/article_8e837464-32f3-5263-91a0-d3c5d66dd0cb.html [<https://perma.cc/ASA6-L6R9>].

75. Sam Wilson, *Coroner's Inquests Quick to Clear Police Following Fatal Shootings*, BILLINGS GAZETTE (July 8, 2019), https://billingsgazette.com/news/state-and-regional/crime-and-courts/coroners-inquests-quick-to-clear-police-following-fatal-shootings/article_728fc158-2900-51ca-bea5-c8a361295991.html [<https://perma.cc/ZG82-JYBU>] [hereinafter Wilson, *Quick to Clear Police*].

unless the decedent died while incarcerated, while in custody, while being taken into custody, or if law enforcement caused the death.⁷⁶ To start the inquest, the coroner selects the jury who will serve as the fact-finders in the inquest (termed the coroner's jury).⁷⁷ Specifically, in officer-involved fatalities, the jury determines whether the killing was justified.⁷⁸ The coroner oversees the proceedings,⁷⁹ but the county attorney leads the inquest by putting forth evidence and questioning witnesses.⁸⁰ The coroner's jury issues its finding based on the county attorney's presentation.⁸¹ The decedent's family does not have representation at inquests.⁸² Critics accuse prosecutors from the Yellowstone County Attorney's Office of bias toward law enforcement given the close relationship between the county attorney and the police.⁸³ All coroner's juries at recent inquest proceedings for officer-involved fatalities have found law enforcement officers committed justifiable killings, which sparked the push for inquest reform.⁸⁴ Critics argue inquests in Montana are rubberstamps on police killings.⁸⁵

This same perception of the inquest system's bias toward law enforcement, coupled with frequent verdicts in favor of law enforcement, prompted reform in Clark County, Nevada—home to Las Vegas—in

76. MONT. CODE ANN. § 46-4-201(2)(a)-(b) (2019). Like district attorneys in other states, county attorneys in Montana are responsible for prosecuting felony crimes and some misdemeanors in their jurisdictions. *About*, MONTANA COUNTY ATTORNEYS' ASSOCIATION, <https://www.mtcoattorneysasn.org/about/> [https://perma.cc/3RUC-PXLD].

77. MONT. CODE ANN. § 46-4-202 (2019). The coroner randomly selects six to twelve jurors from a list of eligible jurors provided by the county clerk. *Id.*

78. *See* Sam Wilson, *Designed to Hold Cops Accountable in Shootings, Coroner's Inquests Aren't Always Objective, Critics Say*, BILLINGS GAZETTE (July 7, 2019), https://billingsgazette.com/news/state-and-regional/crime-and-courts/designed-to-hold-cops-accountable-in-shootings-coroner-s-inquests/article_be9f2acf-293c-5927-a9a4-987c1e4f8010.html [https://perma.cc/HD2S-BS48] [hereinafter Wilson, *Designed to Hold Cops Accountable*].

79. MONT. CODE ANN. § 46-4-202 (2019). The coroner swears in the jury, instructs the jury, subpoenas witnesses, examines witnesses (along with the county attorney), and files the inquest record and jury verdict. *Id.* § 46-4-201–46-4-206. *See also* Wilson, *Designed to Hold Cops Accountable*, *supra* note 78.

80. Wilson, *Designed to Hold Cops Accountable*, *supra* note 78.

81. *Id.*

82. Wilson, *Quick to Clear Police*, *supra* note 75.

The Yellowstone County Attorney has permitted families to participate and ask questions at recent proceedings involving fatal officer shootings. *Gazette Opinion*, *supra* note 74.

83. Wilson, *Quick to Clear Police*, *supra* note 75.

84. *Id.* In Montana's proceedings, the coroner asks the coroner's jury in light of the facts known to the officer at the time of the shooting, was the officer justified in killing the decedent. *See* Wilson, *Designed to Hold Cops Accountable*, *supra* note 78.

85. *See* Wilson, *Quick to Clear Police*, *supra* note 75.

2010.⁸⁶ Clark County's new ordinance sought to balance inquests' fact-finding purpose with the protections afforded to the accused in an adversarial judicial proceeding.⁸⁷ On the one hand, the ordinance affirmed the inquest's purpose to find facts and not point fingers and "appoint[ed] an 'inquest ombudsperson' to represent the deceased's family."⁸⁸ On the other hand, the ordinance required an attorney serve as justice of the peace to preside over the inquest rather than the coroner.⁸⁹ In *Hernandez v. Bennett-Haron*, however, the Nevada Supreme Court overturned the ordinance.⁹⁰

Seattle's King County, Washington currently faces its own judicial challenge to sweeping changes to the county's inquest process. In fact, King County exemplifies how jurisdictions struggle to adapt inquests to meet competing community interests. King County requires inquests when a death involves a law enforcement official.⁹¹ Under King County's contested executive order, juries in inquest proceedings do not inquire into whether the officer-involved fatality was justifiable.⁹² Instead, juries focus on whether the officer followed department policies and trainings.⁹³ The Washington Supreme Court ruled that judges presiding over inquest procedures did not violate the separation of powers between the judicial and executive branches.⁹⁴ Despite this holding, the new executive order requires the Executive's staff overseeing the inquest select the inquest administrator from a pool of retired judges,⁹⁵ in an effort to better balance the inquest's

86. MacMahon, *supra* note 9, at 307. See also *Hernandez v. Bennett-Haron*, 287 P.3d 305 (Nev. 2012).

87. MacMahon, *supra* note 9, at 307–08.

88. *Id.*

89. *Id.*

90. 287 P.3d at 314–16. The Nevada Supreme Court held the ordinance violated the Nevada Constitution. Defining the jurisdictional limits for the justices of the peace is a task reserved solely for the Legislature and not municipal governing bodies. *Id.*

91. KING COUNTY, WASH., CHARTER Art. 8, § 895 (2019), https://aqua.kingcounty.gov/council/clerk/code/03_Charter.pdf [<https://perma.cc/4VGF-XNYG>]; *Carrick v. Locke*, 882 P.2d 173, 176 (Wash. 1994).

92. KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-4-EO (2020), https://www.kingcounty.gov/~media/operations/policies/documents/PHL_7_1_4_EO_Inquest.ashx?la=en [<https://perma.cc/B28K-2F6M>].

93. *Id.* Compare these reforms with the reforms proposed in *Crane*, *supra* note 12, at 806 (proposing South Carolina's inquest process focus on whether officer-involved fatalities were justifiable). The subsequent analysis addresses how these two standards (following department policies versus justifiable killing) compare in advancing the interests of the decedent's family, the accused, and the public.

94. *Carrick*, 882 P.2d at 178.

95. Executive Constantine: Now is the Time to Move Forward with Police Accountability,

fact-finding goals with due process procedures. Notably, inquests conducted in King County follow the rules of evidence, but the inquest administrator retains discretion to vary from the rules.⁹⁶

Thus, the inquest into Charleena Lyles' death presents an opportunity to investigate what happened.⁹⁷ King County requires inquest proceedings for any death involving a law enforcement officer.⁹⁸ But in December 2017, King County officials suspended the county's inquest proceedings into officer-involved fatalities amid growing public concern the process absolved police officers of wrongdoing.⁹⁹ With inquests suspended, county officials endeavored to amend inquest proceedings to introduce greater fairness and transparency for inquests into officer-involved fatalities.¹⁰⁰

In May 2019, the county reintroduced inquests into the county's criminal procedures with significant changes to the process for officer-involved fatalities.¹⁰¹ The new inquest procedure included appointing representation for the decedent's family, permitting the decedent's family to share a statement about the decedent and suggest witnesses to testify, renaming the inquest jury to inquest panel, appointing retired attorneys or judges to serve as the adjudicator rather than a district court judge, and

KINGCOUNTY.GOV (June 15, 2020), <https://www.kingcounty.gov/elected/executive/constantine/news/release/2020/June/15-inquest-reform.aspx> [https://perma.cc/3TYU-LTKX]; KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-4-EO (2020), https://www.kingcounty.gov/~media/operations/policies/documents/PHL_7_1_4_EO_Inquest.ashx?la=en [https://perma.cc/B28K-2F6M].

96. *Id.* at App. 2.

97. Alex Fryer, *Inquest Ordered into Fatal Shooting of Charleena Lyles by Seattle Police*, KINGCOUNTY.GOV (July 9, 2019), <https://www.kingcounty.gov/elected/executive/constantine/news/release/2019/July/09-inquest-lyles.aspx> [https://perma.cc/7YKB-QXUF].

98. KING COUNTY, WASH., CHARTER Art. 8, § 895 (2019), https://aqua.kingcounty.gov/council/clerk/code/03_Charter.pdf [https://perma.cc/4VGF-XNYG]. King County amended the County Charter in 2016 to require inquest proceedings for "any death involving a member of the law enforcement agency of the county in the performance of the member's duties." King County, Wash., Ordinance 18,316 (Oct. 1, 2019). In King County, a medical examiner performs death investigations and inquests are within the county executive's authority KING COUNTY, WASH., CODE § 2.35.090(A)-(C), https://aqua.kingcounty.gov/council/clerk/code/05_Title_2.pdf [https://perma.cc/7HSH-CQN4] (last updated Jan. 8, 2021).

99. Mike Carter, *King County Reinstates Police Deadly-Force Inquests Following Overhaul*, SEATTLE TIMES (May 30, 2019), <https://www.seattletimes.com/seattle-news/king-county-reinstates-police-deadly-force-inquests-following-overhaul/> [https://perma.cc/KQU3-4X39].

100. *Id.*

101. *Id.*

replacing prosecutors with pro tem staff attorneys.¹⁰² Notably, in officer-involved fatalities, the panel now disregards whether officers reasonably feared for their life in determining fault; rather, the panel determines if the officers adequately followed official training, policies, and procedures.¹⁰³

Shortly after issuing these revisions, King County issued a superseding executive order in December 2019.¹⁰⁴ Although virtually identical to the previous executive order,¹⁰⁵ the superseding order clarified attorneys for law enforcement officers could be present if the officers submitted to cross-examination.¹⁰⁶ The county further revised these procedures in a superseding executive order released June 11, 2020.¹⁰⁷ These amendments permitted officers to voluntarily testify or to be subpoenaed to testify, and officers could maintain attorney representation regardless of whether they submitted to cross-examination.¹⁰⁸

Charleena Lyles' family will be one of the first families to engage in

102. *Id.*; see generally KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-2-EO (2018), <https://kingcounty.gov/~media/elected/executive/constantine/news/documents/PHL-7-1-2-EO.ashx?la=en> [<https://perma.cc/NLS4-22T7>].

103. Steve Miletich, *Constantine to Unveil Sweeping Changes in Inquests into Police Use of Deadly Force*, SEATTLE TIMES (Oct. 3, 2018), <https://www.seattletimes.com/seattle-news/constantine-to-unveil-sweeping-changes-in-inquests-into-police-use-of-deadly-force/> [<https://perma.cc/MS93-QYHZ>].

104. KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-3-EO (2019), <https://www.kingcounty.gov/~media/operations/policies/documents/phl713eo.ashx?la=en> [<https://perma.cc/7MLQ-L6RK>].

105. The superseding executive order included only two changes. First, the updated order clarified the participation required by law enforcement members if they wanted attorneys present discussed further in the following footnote. *Id.* at 7. Second, the updated order included a provision providing for tribal representation if the death occurs on a federal Indian reservation. *Id.*

106. *Id.* Compare to Conducting Inquests in King County, PHL-7-1-2-EO (Oct. 3, 2018), (“The law enforcement member(s) involved in the death, who shall be allowed to have an attorney(s) present, provided that the law enforcement member(s) elect(s) to participate in the inquest proceeding.”). For more information about this change see Lester Black, *Butts Inquest Delayed After Last-Minute Change to Rules*, THE STRANGER (Dec. 9, 2019), <https://www.thestranger.com/slog/2019/12/09/42204218/butts-inquest-delayed-after-last-minute-change-to-rules> [<https://perma.cc/AXD4-YAZT>].

107. *Executive Constantine: Now is the Time to Move Forward with Police Accountability*, KING COUNTY (June 15, 2020), <https://www.kingcounty.gov/elected/executive/constantine/news/release/2020/June/15-inquest-reform.aspx> [<https://perma.cc/LWY9-64FJ>]; KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-4-EO (2020), https://www.kingcounty.gov/~media/operations/policies/documents/PHL_7_1_4_EO_Inquest.ashx?la=en [<https://perma.cc/B28K-2F6M>].

108. *Id.*

this new process.¹⁰⁹ According to the family’s attorney, “Charleena’s inquest will be the first time that her family members get to have their voices heard . . . Charleena’s family members anticipate that a different story will emerge with this opportunity to finally critically examine the events surrounding her death.”¹¹⁰ In August 2020, however, a King County Superior Court invalidated the county’s changes as executive overstepping.¹¹¹ Again, King County’s inquest procedures stopped, which further delayed the inquest into the shooting death of Charleena Lyles.

II. THE EFFECTIVENESS OF DIFFERENT MEDICOLEGAL INVESTIGATION PROCEDURES AT FURTHERING DIVERSE INTERESTS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM

Inquest reforms highlight the tension between the American adversarial tradition and inquests’ fact-finding purpose. Reforms to existing inquest proceedings attempt to alleviate this tension and enable criminal procedures to better address challenges in criminal law, particularly in cases of fatalities involving a law enforcement officer. When a death has occurred under unnatural or violent circumstances, particularly when state or local police caused the death, multiple interests interact and conflict. These interests include those of the decedent’s family, the accused, and the public.¹¹²

109. Carla Bell, *Police, Power, Policy, and Privilege vs. The People: We’re All Charleena Lyles*, ESSENCE, (Feb. 13, 2019), <https://www.essence.com/news/police-power-policy-and-privilege-vs-the-people-were-all-charleena-lyles> [https://perma.cc/6Q33-K3FT].

110. *Id.*

111. Elise Takahama, *King County Superior Court Judge’s Ruling Halts Police Deadly-Force Inquest Process*, SEATTLE TIMES (Aug. 21, 2020), <https://www.seattletimes.com/seattle-news/king-county-superior-court-judges-ruling-halts-police-deadly-force-inquest-process/> [https://perma.cc/94UK-YTSE]. The County filed a notice of appeal in September 2020. Case Summary: 20-2-01420-6 SEA, King County Superior Court Clerk’s Office, <https://dja-prd-ecexapl.kingcounty.gov/?q=node/411> (to find this order, search case number in court database) [https://perma.cc/527C-YNCD].

112. The following analysis focuses on the interests of these three parties to whom the government is accountable. In an ideal world, the government would consider the interests of these three groups: the victim, the accused, and the public, as fundamental to forming an informative and just inquest proceeding. Other interests include the interests of the municipal government, the prosecutor, the coroner, the medical examiner, and/or other death investigators. These interests of government entities and officials, however, are beyond the scope of this analysis. Significantly, this analysis excludes the State’s interests. First, the three included interests—the family, the accused, and the public—would largely mirror the State’s own interests. Second, the State’s separate interest lies in efficiently resolving disputes to conserve financial resources. This analysis concentrates on interests related to justice and information-gathering. The State’s financial interests are beyond this scope.

Like the American criminal justice system, the decedent's family's interests are largely retributive.¹¹³ Both adversarial and inquisitorial systems assume an individual's family seeks justice when their loved one is killed.¹¹⁴ The family also holds a legal interest in preliminary investigatory proceedings, because the findings are often relevant in later criminal trials or civil actions.¹¹⁵ Moreover, the family holds an important psychological interest in obtaining information about the decedent's cause of death.¹¹⁶ Understanding how a family member died can assist in the grieving process.¹¹⁷ The decedent's family also maintains an interest in dignity and respect for their deceased family member.

The accused's interests are foundational to the American adversarial legal system.¹¹⁸ The accused has a constitutionally recognized interest in preserving their rights against self-incrimination and their right to due process.¹¹⁹ If the accused faces future adjudicatory action, they hold an interest in protecting their rights by ensuring the adjudicative body fairly administers the preliminary investigative proceedings.¹²⁰

The public's interests are multi-faceted. The public holds a similar interest to the decedent and the decedent's family in preserving dignity in death.¹²¹ Likewise, the public shares a retributive interest with the family in holding members of the community accountable for an individual's

113. Susan Bandes, *When Victims Seek Closure: Forgiveness, Vengeance and the Role of Government*, 27 *FORDHAM URB. L.J.* 1599, 1604 (2000).

114. *See id.* at 1605.

115. A criminal action's success bears strongly on the success at the subsequent civil action stage. Hiroshi Motomura, *Using Judgments As Evidence*, 70 *MINN. L. REV.* 979, 1008 (1986) ("A prior judgment admitted into evidence, in contrast, can heavily influence the outcome of litigation, but is not binding on the subsequent litigants.").

116. *See* MacMahon, *supra* note 9, at 289.

117. *Id.* at 289, 296-97; *see* Robin Baumann & Sharon Stark, *The Role of Forensic Death Investigators Interacting with the Survivors of Death by Homicide and Suicide*, 11(1) *J. OF FORENSIC NURSING* 28 (2015).

118. *See* *Faretta v. California*, 422 U.S. 806, 818 (1975) ("The rights to notice, confrontation, and compulsory process, when taken together, guarantee that a criminal charge may be answered in a manner now considered fundamental to the fair administration of American justice—through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence.").

119. *Id.*; U.S. CONST. amend. V, XIV. *See also* Catholic University Law Review, *supra* note 12, at 239.

120. *See, e.g.*, Catholic University Law Review, *supra* note 12, at 232 n.29.

121. *See* MacMahon, *supra* note 9, at 289, n.79 ("[P]eople have a legitimate interest in dying in the way that they choose, or at least in avoiding indignity in the manner of their deaths.").

death.¹²² The public maintains an interest in ensuring the criminal justice system is fair and just, safeguarding the accused's due process rights. Furthermore, deaths that increase tension within the community raise the public's psychological interest.¹²³ Given these interests, the public may demand immediate explanations for a decedent's death, although the state may wish to withhold the information. Finally, the public shares a public safety interest in knowing about health and safety hazards to the community. In light of these interests and inquests historical underpinnings, the question remains, how well do inquests advance these interests today?

A. Non-Inquest Medicolegal Investigations

In states that have abolished inquest systems, law enforcement officials rely on medical examiners to conduct medicolegal investigations.¹²⁴ The non-inquest medicolegal investigation proceeds from investigation to preliminary hearing or indictment proceedings without holding an inquest.¹²⁵ A medical examiner advances an inquisitorial system's fact-finding purposes by performing a thorough investigation into the cause of death, grounded in scientific fact.¹²⁶ This process stands in opposition to the inquest system. Neither a lay coroner nor an inquest jury of lay people have the medical expertise to determine cause of death.¹²⁷

Non-inquest medicolegal investigations advance the family's retributive interests by investigating the decedent's cause of death. Many states require the medical examiner inform the family of the cause of death through the death certification process.¹²⁸ This open fact-finding, bolstered

122. See e.g., *Kennedy v. Louisiana*, 554 U.S. 407, 442 (2008) (“The goal of retribution, which reflects society’s and the victim’s interests in seeing that the offender is repaid for the hurt he caused . . . does not justify the harshness of the death penalty here.”).

123. See MacMahon, *supra* note 9, at 300–01.

124. See HANZLICK, *supra* note 62. Medicolegal means “the application of medical science to law.” *Medicolegal*, BLACK’S LAW DICTIONARY (11th ed. 2019). Note, certain jurisdictions, including King County, Washington, have inquest procedures and medical examiners. Medical examiners perform medicolegal investigations, but conducting inquests remains under the County Executive’s authority. *Carrick*, 882 P.2d at 176. See also, KING COUNTY, WASH., CODE 2.35A.090(A)–(C) (2020).

125. See Jeff Dusek, *The Prosecutor’s Perspective*, in MEDICOLEGAL DEATH INVESTIGATION SYSTEM: WORKSHOP SUMMARY 31 (2003).

126. Vincent Di Maio, *The Value of Medical Expertise in Death Investigation*, in MEDICOLEGAL DEATH INVESTIGATION SYSTEM: WORKSHOP SUMMARY 29 (2003).

127. See Parrott, *supra* note 7.

128. Erin G. Brooks & Kurt D. Reed, *Principles and Pitfalls: A Guide to Death Certification*,

by medical expertise, also supports the family's psychological interests in discovering the decedent's manner of death. Likewise, medical examiners may provide expert testimony at trial, advancing the family's legal interests in criminal prosecution or in any civil action.

The next steps in non-inquest medicolegal investigations fail to similarly advance the interests of the decedent's family. Unlike an inquest which provides a public forum for the family to learn about the decedent's cause of death, in jurisdictions without inquests, law enforcement officials exercise their discretion to pursue the case further. A prosecuting attorney may decide there is insufficient evidence to pursue the case.¹²⁹ Without an inquest's public investigation, a family may never fully comprehend what happened to their family member.¹³⁰ This lack of information harms the family's retributive, legal, and psychological interests. If the prosecutor chooses to not pursue the case, the family's retributive interests go unanswered as they do not know who is responsible for their loved one's death. Moreover, not holding anyone criminally liable makes pursuing a civil remedy all the more difficult.¹³¹ Finally, unless the medical examiner or forensic pathologist provides information directly to the family, the family may never know what happened to the decedent, heightening the family's trauma and injuring their psychological interests.

Non-inquest medicolegal investigations uphold the adversarial principles of the American criminal justice system. The preliminary hearing protects the accused's interests in preserving their right to due process and right against self-incrimination by providing the accused with counsel.¹³² Grand jury proceedings do not afford the same due process protections,¹³³ but the secrecy of grand jury proceedings protects the reputation of witnesses who the grand jury clears of suspicion.¹³⁴

13 CLIN. MED. RES. 74 (2015).

129. Leslie Griffin, *The Prudent Prosecutor*, 14 GEO. J. LEGAL ETHICS 259, 268–69 (2001).

130. See, e.g., MacMahon, *supra* note 9, at 278 (“[E]ven in cases where no one is to blame for the death, inquests can do things that adversarial litigation is not designed to do: to help the deceased's family come to terms with the death, and to warn the broader community of the dangers of deadly activities while suggesting precautions.”).

131. Motomura, *supra* note 115.

132. *Coleman v. Alabama*, 399 U.S. 1, 10 (1970).

133. *United States v. MacDougal (In re Grand Jury Subpoena)*, 97 F.3d 1090, 1093 (8th Cir. 1996). The Eighth Circuit relied on *United States v. Mandujano*, 425 U.S. 564, 581 (1976) in finding the Sixth Amendment right to counsel inapplicable to grand jury proceedings.

134. *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 218–19 (1979).

Medicolegal investigations uphold the public's interests by accurately providing information about the decedent's cause and circumstances of death.¹³⁵ These investigations also support the public's interest in preserving the accused's due process rights through adversarial proceedings.¹³⁶ The secret nature of grand jury proceedings, however, severely limits the public's knowledge.¹³⁷ The grand jury does not explain why they decline to indict a suspect, leaving the public's retributive interest unanswered and undermining the public's psychological interest.¹³⁸ The grand jury's silence regarding controversial cases increases tensions in the community.¹³⁹ Non-inquest medicolegal investigations, however, do not necessarily undermine the public's interest in public safety and public health.¹⁴⁰ Medical examiners may partner with local public safety and health agencies to alert communities to arising dangers, regardless of whether individual death investigations are public.¹⁴¹

135. See CDC, Medical Examiners' and Coroners' Handbook on Death Registration and Fetal Death Reporting 2, (2003), https://www.cdc.gov/nchs/data/misc/hb_me.pdf [<https://perma.cc/YTC9-95L5>]. Accurate death information furthers the public's interest in identifying how a citizen died, rising public health or safe hazards, and informs mortality statistics. *Id.* Notably, medical examiners may be better equipped to accurately record the cause and circumstances of death than a lay coroner given their medical expertise. Sandra Bartlett, *Coroners Don't Need Degrees To Determine Death*, NPR (Feb. 2, 2011), <https://www.npr.org/2011/02/02/133403760/coroners-dont-need-degrees-to-determine-death> [<https://perma.cc/8AGZ-SYPH>]. Note, not all coroners lack medical expertise, neither are all medical examiners trained in death investigation specifically. *Id.*

136. See Fairfax, *supra* note 69, at 402.

137. *Id.* at 405.

138. *Id.* at 399.

139. Paul MacMahon highlights public protests following secret grand jury proceedings declining to indict officers for killing Michael Brown in Ferguson, Missouri and Eric Gardner in New York City. See MacMahon, *supra* note 9, at 300–01.

140. See Randy Hanzlick, *Medical Examiners, Coroners, and Public Health: A Review and Update*, 130 ARCHIVES OF PATHOLOGY & LABORATORY MEDICINE 1274, 1278 (2006).

141. *Id.*

B. Traditional Inquests in the United States: The Montana Case Study

The traditional coroner's inquests in Yellowstone County, Montana bolster the inquisitorial approach by holding a public proceeding on unnatural or violent deaths.¹⁴² Generally, the inquest process appears to further the decedent's family's psychological interests.¹⁴³ In theory, the inquest elucidates the circumstances around the death in a public forum, providing the family with information about the decedent's manner of death.¹⁴⁴ In practice, however, the wide range of prosecutorial discretion undermines the family's retributive and legal interests. Although the coroner selects the coroner's jury and directs the proceedings, the county attorney presents the case before the jury.¹⁴⁵ The inquest does not provide the family with representation.¹⁴⁶ The county attorney, within his discretion, however, has permitted families to participate in proceedings.¹⁴⁷ Ultimately, lacking personal representation and leaving participation to the prosecutor's discretion undermines the family's retributive interest in holding someone accountable for the decedent's death. The prosecutors exercise further discretion in presenting the case and may purposefully offer a weak case, particularly where the county attorney has a professional relationship with the accused police officer.¹⁴⁸ Moreover, the family's legal interest suffers when they are beholden to the prosecutors' decisions and without representation. Notably, every inquest has found officer shootings justified,¹⁴⁹ presenting families with an up-hill battle in their pursuit for civil claims. The family's lack of representation also impedes the decedent's family's psychological interests if the county attorney fails to illuminate the circumstances surrounding the decedent's death.¹⁵⁰

142. See *Gazette Opinion*, *supra* note 74.

143. See MacMahon, *supra* note 9, at 289 (“[A]n inquest and the information it uncovers can help the deceased's family and friends come to terms with the trauma of bereavement.”).

144. Montana law supersedes prosecutorial discretion to require inquests occur whenever police officers fatally shoot an individual, unless criminal charges are pending. MONT. CODE ANN. § 46-4-201(2)(b) (2019).

145. Wilson, *Designed to Hold Cops Accountable*, *supra* note 78.

146. Wilson, *Quick to Clear Police*, *supra* note 75.

147. *Gazette Opinion*, *supra* note 74.

148. See Wilson, *Quick to Clear Police*, *supra* note 75.

149. *Id.*

150. Under the current system, the inquest may prove no more explanatory than secretive grand jury proceedings, particularly where the jury reaches the decision that a killing was justified without providing sufficient explanation or where the prosecuting attorney failed to adequately represent the

Yellowstone County's inquest procedure undermines the accused's due process interests typically upheld under an adversarial system. The prosecutor drives the proceedings, not a neutral third party.¹⁵¹ Inquests do not afford the accused representation,¹⁵² and the rules of evidence do not apply. But, in practice, the close professional relationship between the county attorney and accused law enforcement officers counteracts the accused's procedural disadvantages at the inquest.¹⁵³

In theory, Montana's public inquest procedure preserves the public's retributive and psychological interests.¹⁵⁴ This public proceeding supports full, open fact-finding.¹⁵⁵ In turn, this publicity further informs the public of impending dangers to public health or safety.¹⁵⁶ The prosecuting attorney's role in leading inquest proceedings, however, undercuts the inquest's open fact-finding. In all cases where the accused was a law enforcement officer, the coroner's jury found the accused committed justifiable homicide.¹⁵⁷ The prosecuting attorney's working relationship with the law enforcement officer and presence as the only authority before the coroner's jury undermines the impartiality of the proceedings and thus obstructs the public's retributive and psychological interests.¹⁵⁸

decendent's interests.

151. Wilson, *Designed to Hold Cops Accountable*, *supra* note 78.

152. Wilson, *Quick to Clear Police*, *supra* note 75.

153. See, e.g., Wilson, *Designed to Hold Cops Accountable*, *supra* note 78.

154. See, e.g., Wilson, *Quick to Clear Police*, *supra* note 75. Montana law does not compel an independent investigation when an officer-involved fatality occurs. Thus, inquests allow the public to learn about these occurrences. *Id.* ("The value of the inquest is that if it is designed in the right way, it can seek truth and uncover important evidence and lead to some kind of public statement about what happened.").

155. See MacMahon, *supra* note 9, at 278.

156. See *id.* at 294.

157. Wilson, *Quick to Clear Police*, *supra* note 75.

158. See, e.g., Wilson, *Designed to Hold Cops Accountable*, *supra* note 78 (discussing how prosecutor's working relationship with law enforcement and ability to influence inquest juries' findings undermines inquests' principle of accountability).

C. Incremental Reform: The Nevada Case Study

Where inquest procedures in Montana fail to adhere to inquisitorial principles, Clark County, Nevada sought to bolster these principles by increasing independent protections for all parties.¹⁵⁹ By appointing an inquest ombudsperson to represent the decedent's family, the ordinance furthered the family's retributive, psychological, and legal interests.¹⁶⁰ The ombudsperson represents the family's interests, sharing the family's questions and concerns at the proceedings.¹⁶¹ Ideally, through the ombudsperson's representation, the family can obtain a full picture of the decedent's cause of death.¹⁶² Moreover, the ordinance provided justices of the peace conduct the inquest and not coroners.¹⁶³ As a neutral third party, the justice of peace introduces greater impartiality to the proceedings to ensure family's receive fair representation and prosecuting attorneys fully explore their inquiry.

If counsel fairly represents the accused's interests and preserves their rights, then the family's representation through an ombudsperson should not undermine the accused's due process interests.¹⁶⁴ The justice of the peace may also serve as an additional line of defense protecting the accused's

159. See Clark County, Nev., Ordinance 3920 (Dec. 7, 2010). Notably, by increasing impartiality by appointing some form of representation for the decedent's family and conducting inquests under the auspices of a justice of peace, the ordinance increased the adversarial qualities of the inquest proceedings.

160. See MacMahon, *supra* note 9, at 307–08.

161. Scott Wyland, *Coroner's Inquest System has its First Ombudsman*, LAS VEGAS REV. J. (June 3, 2011), <https://www.reviewjournal.com/crime/courts/coroners-inquest-system-has-its-first-ombudsman/> [<https://perma.cc/JXB9-Q3RY>].

162. *Id.*

163. The coroner in Clark County, like the county attorney in Yellowstone County, was perceived to be biased against victims because of existing professional relationships with law enforcement agencies and officers wherein the coroner fails to challenge the accused officer's statements during an inquest proceeding. Michael J. Gayan, *Judge Dredd: Hollywood Fiction or Las Vegas Reality?*, 8 NEV. L.J. 698, 727 (2008). See also Lawrence Mower, *Inquests Undercut by Prosecutorial Inaction, Deference to Police*, LAS VEGAS REV. J. (Nov. 30, 2011), <https://www.reviewjournal.com/uncategorized/inquests-undercut-by-prosecutorial-inaction-deference-to-police> [<https://perma.cc/WGD2-4FKR>] (“[T]he deck is stacked in favor of police well before the case gets to the jurors. That’s because the “neutral arbiter of the facts” is the deputy district attorney who already believes that no crime has been committed.”).

164. See Model Rules of Professional Conduct Preamble ¶ 8 (2020) (“[W]hen an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done.”).

rights by keeping the proceedings investigative and not adversarial.¹⁶⁵ Accused officers may have attorney representatives who question witnesses along with the inquest ombudsperson.¹⁶⁶

The inquests' public nature preserved the public's retributive interests in knowing the legal system has achieved the most just outcome based on a full fact-finding. Clark County's reforms supports the public's psychological interest in preserving community relationships. The reforms' emphasis on impartiality enhances the public's faith in the proceeding's legitimacy and the jury's ability to reach the "right" answer.¹⁶⁷

D. Reforms in Unchartered Territory: The Washington Case Study

Following heightened criticism regarding bias in inquisitorial proceedings, King County, Washington sought to balance the United States' adversarial tradition with the inquisitorial intention of inquests through a reformed inquest process.¹⁶⁸ Notably, the King County executive order adjusted the language in inquests.¹⁶⁹ "Jury" gave way to the less adversarial term "inquest panel" and the judge became the "administrator."¹⁷⁰ This linguistic change reaffirms the impartial fact-finding and inquisitorial principles of the proceeding.¹⁷¹ The family's retributive, psychological, and legal interests are preserved through representation by counsel.¹⁷² Counsel

165. MacMahon, *supra* note 9, at 308.

166. *Id.* at 310.

167. Ultimately, this ordinance failed on state constitutional grounds. *Hernandez v. Bennett-Haron*, 128 Nev. 580, 593 (2012). The Nevada Supreme Court held only the legislature could imbue the justices of the peace with authority and not the county. *Id.* After the state supreme court overturned the ordinance, the county declined to pursue a replacement provision, facing pressure from law enforcement interest groups to drop future reforms. MacMahon, *supra* note 9, at 308.

168. Steve Miletich, *Should King County Change How it Does Inquests? Panel to Tackle Big Questions*, SEATTLE TIMES (Dec. 12, 2017), <https://www.seattletimes.com/seattle-news/panel-to-weigh-possible-changes-to-king-county-inquests/> [<https://perma.cc/SZ7H-JQSK>].

169. Carter, *supra* note 99.

170. *Id.*

171. See *King County Inquest Process Review Committee: Report and Recommendations*, KINGCOUNTY.GOV (Mar. 30, 2018), https://kingcounty.gov/~media/elected/executive/constantine/initiatives/inquest/KC_Inquest_Committee_Report_3-30-18.ashx?la=en [<https://perma.cc/KJ4R-6CS5>]. The committee and contributing advocacy groups identified inquests language accessibility and use of jargon as opportunities for reform. *Id.*

172. See *Council Approves Legal Assistance for Families During Inquest Process*, KINGCOUNTY.GOV (Jan. 29, 2018), <https://www.kingcounty.gov/council/news/2018/January/01-29-Inquestlegal.aspx> [<https://perma.cc/B26B-CHX4>].

provided by the county advocates for the family's interests, free of cost.¹⁷³ This advocacy encourages family participation in inquests and promotes transparency.¹⁷⁴

The less adversarial, more inquisitorial-focused terminology aligns the proceedings' language with its nonbinding principles. Separating inquest proceedings from adjudicatory proceedings preserves self-incrimination and due process rights. On the other hand, inquests mimic adjudicatory proceedings by generally following the rules of evidence, subject in part to the administrator's discretion.¹⁷⁵ Adhering to the rules of evidence both helps and hinders the accused's interest. Following the rules of evidence helps the accused by excluding unreliable evidence that would otherwise be inadmissible at trial.¹⁷⁶ Adhering to the stringent rules of evidence, however, undermines assurances to the accused that inquests are not pseudo-judicial proceedings.¹⁷⁷ While the Washington State Court Rules of Evidence generally guide the introduction of evidence at inquests, the administrator may only include the decedent's criminal history and accused law enforcement officer's disciplinary history if the administrator, within their discretion, determines each history is relevant to the circumstances surrounding the manner of death.¹⁷⁸

The original 2018 reforms prohibited law enforcement officers from having counsel present unless officers agreed to testify subject to examination by all parties.¹⁷⁹ This prohibition compromised law

173. See King County, Wash., Ordinance 18652 (Jan. 30, 2018).

174. *Id.*

175. KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-4-EO, at App. 2 (2020), https://www.kingcounty.gov/~media/operations/policies/documents/PHL_7_1_4_EO_Inquest.ashx?la=en [<https://perma.cc/B28K-2F6M>].

176. See FED. R. EVID. Rule 102 (2019) ("These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination."); *United States v. Augenblick*, 393 U.S. 348, 352 (1969) ("Rules of evidence are designed in the interest of fair trials.").

177. See MacMahon, *supra* note 9 (noting unlike adversarial proceedings, inquests do not follow the rules of evidence).

178. KING COUNTY, WASH., EXECUTIVE ORDER PHL-7-1-4-EO (2020), https://www.kingcounty.gov/~media/operations/policies/documents/PHL_7_1_4_EO_Inquest.ashx?la=en [<https://perma.cc/B28K-2F6M>].

179. In recent King County proceedings, the administrator removed the officers' counsel because the officers failed to comply with the pre-inquest conference order requiring the officers declare whether they would testify at the inquest proceedings. Officer Participation Order, Inquest into the Death of Damarius Demonta Butts, Inquest No. 517IQ0713 (Nov. 19, 2019), <https://www.kingcounty.gov/~media/services/inquest-program/documents/517IQ8013/butts-517IQ0713-order-officer-participation20191119.ashx?la=en> [<https://perma.cc/7URW-GYWV>].

enforcement officers' due process rights by withholding representation unless officers testified. Furthermore, in officer-involved fatalities, officers could not be subpoenaed, reinforcing inquests' inquisitorial principles, but potentially to the detriment of the family receiving a full fact-finding.¹⁸⁰

Representation for both parties preserves the public's interest in fair proceedings that support the decedent's family's retributive interests and the accused's due process rights. Retired judges oversee the inquest panel and the proceedings, and an impartial pro tem attorney pursues the inquest before the panel.¹⁸¹ Recording and publishing all proceedings online further advances the public's interest in staying informed.¹⁸² In this way, members of the public who have never interacted with the inquest proceeding may now engage in retributive justice for deceased community members and learn about developing threats to public safety and health.

III. BALANCING INTERESTS THROUGH A HYBRID ADVERSARIAL-INQUISITORIAL APPROACH: A PROPOSAL

In light of these various approaches to medicolegal investigation and the future of inquest reform, jurisdictions should adopt a hybrid approach. The inquisitorial system preserves the decedent's family's interests by encouraging open fact-finding into the cause of death. The adversarial system, however, better preserves the decedent's family's interests in encouraging a rigorous case investigation and presentation against the accused.¹⁸³ Thus, if the decedent's family has the adversarial advantage of representation at the inquest, then the family would desire representation akin to the adversarial model to ensure the inquest proceedings uphold their legal interests in bringing a later civil suit against the accused. Likewise, the adversarial system preserves the accused's due process rights, but public proceedings under the inquisitorial system ensure all parties, from the

180. For greater critical insight into King County's executive order see Lester Black, *The Revolution in Seattle Inquest Hearings Will Be Televised*, THE STRANGER (Dec. 3, 2019), <https://www.thestranger.com/slog/2019/12/03/42165249/the-revolution-in-seattle-inquest-hearings-will-be-televised> [https://perma.cc/BLJ2-63V8].

181. Carter, *supra* note 99.

182. KING CNTY. INQUEST PROCESS REV. COMM., KING CNTY. EXECUTIVE, REPORT AND RECOMMENDATIONS 7 (Mar. 30, 2018), https://www.kingcounty.gov/elected/executive/constantine/news/release/2018/April/~/_/media/9FBEBF9E9AE44A3DB9AFAA91CABBFC66.ashx?la=en [https://perma.cc/MK2C-QSSN].

183. See discussion *infra* Part II.

individual overseeing the proceedings to the individual prosecuting the proceedings, are accountable to the public. In short, this hybrid approach balances the due process rights of the accused with the public interest in a full and complete inquiry into the circumstances surrounding a suspicious or violent death.

First, states that currently shroud investigatory proceedings in the secrecy of grand jury deliberations should adopt modified inquest proceedings. Second, as part of this modified inquest, executives should appoint judges to oversee the proceedings. Since the public often perceives coroners and medical examiners as biased toward law enforcement,¹⁸⁴ an impartial, neutral third party overseeing the proceedings advances the perception that all interests are fairly represented. Third, all parties should receive representation provided by the city or county holding the inquest. Although the fact-finding purpose remains the north star for these modified inquest proceedings, fair and adequate representation is a cornerstone of the American criminal justice system. Families may be more apt to accept inquest findings when they perceive that the proceeding fairly represented their interests.¹⁸⁵ In all other respects, adversarial interests should give way to inquisitorial principles that emphasize mutual accountability for a full fact-finding and earnest disclosure by all parties. Finally, inquest proceedings should clearly delineate that the jury or inquest panel does not make the prosecutorial decision, but merely determines the facts surrounding the death. Since parties' representative capacities vary and the proceedings abrogate the rules of evidence, interests are not truly preserved if juries are permitted to make purely symbolic, yet legally errant conclusions. This hybrid approach supports the decedent's family's interests, the accused's interests, and the public's interest ensuring dignity and respect in death.

This hybrid approach is not perfect. Critics for the family will argue this approach does not go far enough to preserve the interests of the decedent

184. Justin Feldman, *Opinion: Want Police Reform? We Need Independent Medical Examiners and Coroners*, WASH. POST (June 2, 2020), <https://www.washingtonpost.com/opinions/2020/06/02/want-police-reform-we-need-independent-medical-examiners-coroners/> [https://perma.cc/WGL8-VWE4].

185. See, e.g., Stephanie Dartnall, et al., *An Opportunity to Be Heard: Family Experiences of Coronal Investigations Into Missing People and Views on Best Practice*, FRONTIERS IN PSYCH. (Nov. 12, 2019), <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.02322/full> [https://perma.cc/Q599-SQPZ].

and their family. The jurisdiction's government retains substantial control over who the administrator is, who the appointed counsel is for the family, where the proceeding takes place, when the proceedings will occur, and what evidence is permissible. The government's broad discretion in these areas allows for bias to corrupt the process. This argument is particularly salient given the close relationship between executive officials and law enforcement officers. The procedures' public nature, however, will hold the government accountable to fairly administer inquest proceedings. Moreover, the appointed counsel should be an individual who can advocate for the family when the potential for bias occurs. This may require executive officials hire the family's representation from outside the government.

Likewise, critics for the accused will argue this approach infringes the accused's due process rights. Permitting representation for both parties portrays proceedings as adversarial, defeating proceedings' inquisitorial purpose. The approach places the accused in an adversarial criminal proceeding without any of the protections afforded by the Constitution. This concern notwithstanding, the judicial administrator over the proceedings is responsible for ensuring the parties' constitutional rights are upheld as in a usual criminal court proceeding. In addition, and more significant, in the hybrid approach inquest findings remain nonbinding on the parties. Thus, the prosecutor still determines whether to bring a case against the accused given the open fact-finding available during the inquest proceeding. Although not perfect, this approach is a preliminary step to opening American criminal justice proceedings to greater advocacy for previously silent interests and enhanced public participation.

CONCLUSION

This hybrid approach draws from different models of preliminary medicolegal investigation which highlight the struggle communities face when investigating an individual's violent or unnatural death. In states with inquests, these proceedings advance family's psychological interests by permitting the family to learn about their relative's manner of death. But inquests undermine the family's retributive interests through policies that are too permissive toward law enforcement officers, a fact exemplified by families' biased experiences in Yellowstone County, Montana. Likewise, the open fact-finding process, untethered by evidentiary rules, compromises the accused's due process rights, more so if the accused is denied representation. If denied representation, the adversarial nature maintained by the presence of counsel for other parties has the potential to violate the accused's constitutional rights in criminal proceedings, as raised in pre-inquest conferences in King County, Washington. In the interests of all three parties, however, inquests' public nature ensures accountability in the initial criminal justice process. The decedents achieve dignity and retributive justice, while public safety officers and executive officials are held accountable to official policies and procedures.

In states without inquest proceedings, grand jury proceedings impede the family and public's psychological and retributive interests by shrouding information surrounding the decedent's manner of death in secrecy and absolving the accused of wrongdoing without any explanation. This adversarial formality upholds the due process rights of the accused, but at the expense of public oversight, potentially exposing the accused to prosecutorial malice.

Through the proposed adaptation to a centuries-old government procedure, states may reclaim the enduring legacy of inquests in the American criminal justice system, confront growing societal challenges, and champion the interests of the family, the accused, and the public. Inquests preserve respect and dignity in death. Just as medieval coroners conducted inquests to account for assets, so too can inquest administrators today account for interests previously slighted by traditional preliminary criminal justice proceedings to better uphold justice for all.

In the case of Charleena Lyles, this hybrid approach leveraging inquisitorial and adversarial principles would provide her family with

representation, overcome due process obstacles delaying proceedings, and open the investigation to the public. At a memorial for Ms. Lyles, three years after her death, her family members shared their demands for justice in the death of their mother, sister, cousin, and friend.¹⁸⁶ Ms. Lyles' cousin Katrina Johnson decried the stalled inquest proceedings. Referring to the officers who shot Ms. Lyles, Ms. Johnson said, "You are the only ones who know what happened that day in that building where you snuffed out her life, and our family deserves answers."¹⁸⁷

186. Ashley Archibald, *Seattle Police Killing of Charleena Lyles Localizes Blacklives Protest and Amasses Similar Stories, Three Years Later*, REAL CHANGE (June 24, 2020), <https://www.realchangenews.org/news/2020/06/24/seattle-police-killing-charleena-lyles-localizes-blacklives-protest-and-amasses-similar> [<https://perma.cc/WBZ5-YKLP>].

187. *Id.*